

APPENDIX L

**FIRM PHYSICAL
WHOLESALE POWER PURCHASE AND SALE AGREEMENT**

Between

Portland General Electric Company

And

[Counterparty]

This WHOLESALE POWER PURCHASE AND SALE AGREEMENT for Firm Physical Energy ("Agreement") is entered into effective as of the _____ day of _____, 200_ ("Effective Date"), by and between [Counterparty], a [STATE] corporation ("Counterparty"), and Portland General Electric Company, an Oregon corporation ("PGE"). PGE and Counterparty are also referred to herein individually as a "Party" and collectively as the "Parties."

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions.

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

1.1.1 "Affiliate" means, with respect to a Party, any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power. For the purposes of this Agreement, except for Section 15.1, PGE will be deemed to have no Affiliates.

1.1.2 "Agreement" means this Wholesale Power Purchase and Sale Agreement for Firm Physical Energy entered into between Counterparty and PGE and all incorporated appendices, exhibits, schedules and attachments hereto, as may be amended by the Parties from time to time.

1.1.3 "Ancillary Services" means all ancillary products associated, in accordance with Prudent Electric Industry Practice, with the generation of electrical Energy, including, without limitation, spinning reserves, non-spinning reserves, reactive power and voltage control.

1.1.4 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.1.5 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

1.1.6 "Claiming Party" has the meaning set forth in Section 4.2.

1.1.7 "Collateral Threshold" means, with respect to PGE, \$_____ in USD (or its equivalent in another currency), and with respect to Seller \$_____ in USD (or its equivalent in another currency), provided, however, that a Party's Collateral Threshold shall be zero (\$0) upon the occurrence and during the continuance of an Event of Default, or Material Adverse Change with respect to such Party.

1.1.8 "Contract Price" means Energy Charge and any other charges which have been agreed to by the Parties in this Agreement.

1.1.9 "Contract Quantity" means that MWh quantity of the Product that Counterparty agrees to make available or sell and deliver, or cause to be delivered, to PGE, and that PGE agrees to purchase and receive, or cause to be received, from Counterparty as specified in this Agreement.

1.1.10 "Contract Term" means the period of time referenced in Section 2.1.

1.1.11 "Control Area" means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generator within the electric power system(s) and the capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Utility Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Utility Practice.

1.1.12 "Costs" means, with respect to a Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys' fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering or terminating any arrangement pursuant to which it has hedged its obligations.

1.1.13 "Counterparty" means _____, the Party to this Agreement that is obligated to sell and deliver and, or cause to be delivered, the Product, as specified in this Agreement.

1.1.14 "Credit Rating" means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody's with respect to such entity's long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody's, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody's with respect to such entity's long-term, unsecured, unsubordinated deposits.

1.1.15 “Cross Default Amount” means with respect to PGE, \$_____ in USD (or its equivalent in another currency), and with respect to Seller or its Guarantor, if applicable, \$_____ in USD (or its equivalent in another currency).

1.1.16 “Daily” means any 24-Hour period commencing at 0000 Hours.

1.1.17 “Defaulting Party” has the meaning set forth in Section 5.1.

1.1.18 “Delivery Period” has the meaning set forth in Section 2.2.

1.1.19 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Scheduling notice.

1.1.20 “Determination Period” means each calendar Month during the Contract Term; provided that if the remaining term of the Agreement is less than one calendar Month, the Determination Period shall be the remaining term of the Agreement.

1.1.21 “Early Termination Date” has the meaning set forth in Section 5.2.1.

1.1.22 “Effective Date” has the meaning set forth in the first paragraph of this Agreement.

1.1.23 “Energy” means electric energy, expressed in megawatt hours (“MWh”), delivered pursuant to this Agreement.

1.1.24 “Energy Charge” means the price of \$_____MWh for Firm Energy [*to be provided by Bidder*].

1.1.25 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.1.26 “Event of Default” has the meaning set forth in Section 5.1.

1.1.27 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.1.28 “Firm” used in the context of “Firm Energy” means the only excuse for the interruption of delivery of the Product is if the interruption is excused by Force Majeure.

1.1.29 “Floating Price” means the price specified in this Agreement that is based upon a Price Source.

1.1.30 “Force Majeure” is defined in Section 4.1.

1.1.31 "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.32 "Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; provided, however, that "Governmental Authority" shall not in any event include either Party.

1.1.33 "Governmental Charges" means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities or any Transmission Provider that would affect sale and purchase of a Product contemplated by this Agreement, either directly or indirectly.

1.1.34 "Guarantor" means, with respect to Counterparty, _____.

1.1.35 "Guaranty" means an instrument or agreement pursuant to which a Guarantor guarantees the performance of each and all of the obligations of a Counterparty, which instrument or agreement is reasonably acceptable in form and substance to PGE.

1.1.36 "Guaranty Default" means with respect to a Guaranty or the Guarantor thereunder, the occurrence of any of the following events: (i) any representation or warranty made or deemed to be made or repeated by such Guarantor in connection with such Guaranty shall be false or misleading in any material respect when made or when deemed made or repeated; (ii) such Guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (iii) the failure of such Guarantor to comply with or timely perform any other material covenant or obligation set forth in such Guaranty if such failure is not capable of remedy or shall not be remedied in accordance with the terms and conditions of such Guaranty; (iv) a Merger Event occurs with respect to such Guarantor; (v) such Guaranty shall expire or terminate, or shall fail or cease to be in full force and effect and enforceable in accordance with its terms against such Guarantor, prior to the satisfaction of all obligations of such Party under this Agreement, in any such case without replacement; (vi) such Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, its Guaranty, or (vii) such Guarantor becomes Bankrupt; provided, however, that no Guaranty Default shall occur or be continuing in any event with respect to a Guaranty after the time such Guaranty is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

1.1.37 "Indemnitee" has the meaning set forth in Section 13.2.

1.1.38 "Indemnitor" has the meaning set forth in Section 13.2.

1.1.39 “Indemnity Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether resulting from a settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.1.40 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.1.41 “Law” means any law, rule, regulation, order, writ, judgment, rulings or orders by or before any court or any governmental authority.

1.1.42 “Letter(s) of Credit” means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P, in a form and substance reasonably acceptable to the beneficiary Party. The costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.1.43 “Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

1.1.44 “Losses” means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.45 “Market Disruption Event” means, with respect to any Price Source, any of the following events (the existence of which shall be determined in good faith by PGE): (a) the failure of the Price Source to report, publish or announce

information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity in the market acting as the Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

1.1.46 “Material Adverse Change” means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody's or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Counterparty, Counterparty or Counterparty's Guarantor, if applicable, shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody's or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Counterparty or Counterparty's Guarantor is rated by only one service, a Material Adverse Change shall occur if such rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

1.1.47 “Merger Event” means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or other entity hereunder or under any Guaranty or Letter of Credit or other performance assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Guaranty, Letter of Credit, or other performance assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations hereunder, or (iii) the Credit Rating (from any of S&P or Moody's) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or other entity immediately prior to such consolidation, amalgamation, merger, or transfer.

1.1.48 “Month” means a calendar month commencing at HE 0100 PPT on the first day of such month through HE 2400 PPT on the last day of such month.

1.1.49 “Moody's” means Moody's Investor Services, Inc. or its successor.

1.1.50 “MW” means megawatt.

1.1.51 “MWh” means megawatt hour.

1.1.52 “Non-Defaulting Party” has the meaning set forth in Section 5.2.1.

1.1.53 “Off-Peak Hours” shall mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday

and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC designated holidays.

1.1.54 “On-Peak Hours” shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

1.1.55 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to PGE.

1.1.56 “Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

1.1.57 “PPT” means Pacific Prevailing Time, that is, prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

1.1.58 “Present Value” means a present value calculation derived by using a commercially reasonable discount rate for each remaining Month of the Contract Term.

1.1.59 “Price Source” means a nationally-recognized market price index, recognized and independent brokers or dealers active in the [Hub Name] Next Day physical power market, containing (or reporting) the specified price (or prices from which the specified price is calculated) set forth in this Agreement.

1.1.60 “Product” means electric capacity, energy or other product(s) related thereto as specified in this Agreement by the Parties.

1.1.61 “Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility’s equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.1.62 “Replacement Price” is described in Section 6.1.2.

1.1.63 “Rounding Amount” means \$250,000 in USD (or its equivalent in another currency).

1.1.64 “S&P” means the Standard & Poor’s, a division of McGraw-Hill Companies, Inc., or any successor thereto.

1.1.65 “Sales Price” is described in Section 6.2.2.

1.1.66 “Schedule,” “Scheduled” or “Scheduling” means the act of each Party or its designated representatives, including its Transmission Providers, if applicable, notifying, requesting and confirming to each other, on a preschedule, hourly schedule or real-time schedule basis, the quantity of Energy to be delivered hourly on any given day or days during the Delivery Term to and at and from the Delivery Point according to customary WECC scheduling practices.

1.1.67 “Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such party incurs as a result of the termination and liquidation of this Agreement pursuant to Section 5.2.2.

1.1.68 “Taxes” means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [State Name] business and occupation tax and [State Name] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

1.1.69 “Termination Payment” has the meaning set forth in Section 5.3.

1.1.70 “Trading Day” means a day in respect of which the relevant Price Source reported, published or announced the Floating Price.

1.1.71 “Transmission Provider(s)” means any entity (including any FERC-authorized regional transmission organization) transmitting Energy on behalf of Counterparty to, and at and from, the Energy Delivery Point; or on behalf of PGE to, and at and from the Energy Delivery Point.

1.1.72 “Transmission Services” means any and all services (including but not limited to Ancillary Services and control area services) required for the transmission and delivery of Energy to the Energy Delivery Point or at and from the Energy Delivery Point.

1.1.73 “Transmission System(s)” means the transmission system(s) of the Transmission Provider(s) to be used by Counterparty for the purpose of transmitting Energy to and at, the Energy Delivery Point; or by PGE for the purpose of transmitting Energy at and from, the Energy Delivery Point.

1.1.74 “USD” means United States Dollars.

1.1.75 "WECC" means the Western Electricity Coordinating Council or any successor thereto.

1.2 Interpretations.

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to Article 15, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 Other grammatical forms of defined words or phrases have corresponding meanings.

1.2.5 A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.6 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.7 A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

1.2.8 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.9 References in this Agreement to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or").

1.2.10 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

1.3 Technical Meanings.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

ARTICLE 2
CONTRACT TERM; DELIVERY PERIOD; PRICE

2.1 Contract Term.

The Contract Term shall begin on _____ (“Effective Date”) and shall continue through _____[Date] (the “Contract Term”), unless otherwise terminated in accordance with its terms; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and; provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations with respect to this Agreement.

2.2 Delivery Period.

Firm Energy shall be made available by Counterparty during the months of _____[months] of each calendar year, during the Contract Term set forth in Section 2.1 (“Delivery Period”).

2.3 Price.

PGE shall pay to Counterparty an Energy Charge of USD \$_____/MWh for Firm Energy.

2.4 Delivery Point.

Commencing on the Effective Date and continuing throughout the Contract Term, Counterparty shall sell and deliver and PGE shall buy and receive at the Delivery Point Firm Energy as scheduled by PGE in accordance with Article 3.

ARTICLE 3
DEFINITIONS AND INTERPRETATION

3.1 Counterparty and PGE’s Obligations.

3.1.1 Delivery of Firm Energy.

Counterparty shall sell and PGE shall purchase and have the right to Schedule Firm Energy in a minimum amount of ____ MWs per Hour and ____ per day, up to a maximum amount of ____ MWs per Hour, and _____ MWs per day as the Contract

Quantity elected by PGE on a daily basis throughout the Contract Term. PGE may Schedule Product during each day of the Delivery Period.

3.1.1.1 Counterparty will charge and deliver, or cause to be delivered, and PGE will pay to Counterparty the Energy Charge and receive, or cause to be received, the Firm Energy as Scheduled at the Delivery Point in accordance with this Agreement.

3.1.1.2 Counterparty's obligation to deliver the amount of Scheduled Firm Energy associated with Firm Capacity purchased by PGE shall be absolute and the only excuse for failure of Counterparty to deliver the Contract Quantity of Product as Scheduled shall be a Force Majeure or PGE's failure to receive. Counterparty shall deliver the Contract Quantity of Product at all times as Scheduled to the Delivery Point(s) except in cases of Force Majeure or PGE's failure to receive.

3.2 Delivery Point.

The Delivery Point for Product delivered by Counterparty to PGE will be at PGE's system or any other alternate Delivery Point as mutually agreed to by the Parties.

3.3 Transmission and Scheduling.

3.3.1 Responsibility for Transmission and Scheduling. Counterparty shall arrange for, pay all costs, and be responsible for transmission service, including but not limited to control area services, spinning and supplemental reserves, imbalance or inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Provider(s), in accordance with the practice of the Transmission Provider(s), to deliver the Product to the Delivery Point. PGE shall arrange for, pay all costs, and be responsible for transmission service, including but not limited to control area services, spinning and supplemental reserves, imbalance or inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Provider(s) to receive the Firm Energy at the Delivery Point. Each Party shall designate authorized representatives to effect the Scheduling of Firm Energy. All deliveries and receipts of energy under this Agreement shall be made at the Delivery Point or other mutually agreed-to delivery point.

3.3.2 Preschedules. The Parties shall exchange preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 10:00:00 PPT on the last Business Day prior to the Scheduled date of delivery. The Parties' respective representatives shall maintain hourly real-time Schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. All schedules hereunder shall be accounted for on the basis of scheduled hourly quantities of Firm Energy at the Delivery Point, except that when deliveries are interrupted for any

reason, schedules shall be reduced thereafter to reflect such interruptions. In case the scheduled deliveries and receipt of Firm Energy are not maintained for an entire hour, deliveries shall be pro-rated on a mutually agreed-upon basis. Counterparty and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' Schedule. All energy shall be prescheduled according to customary WECC scheduling practices.

3.3.3 Interruptions and Curtailments. In the event of interruptions or curtailments, except as may be caused by a Force Majeure event or PGE's failure to receive, Counterparty shall use commercially reasonable efforts to Schedule make-up energy to the Delivery Point on a real-time basis in order to maintain the Scheduled Contract Quantities of Energy for affected hours; provided, however, that in the event of any failure by Counterparty to Schedule any such make-up energy to the Delivery Point, PGE may exercise any rights and remedies provided under this Agreement.

ARTICLE 4 FORCE MAJEURE

4.1 Definition.

Force Majeure means an event or circumstance which prevents one Party from performing its obligations to deliver or receive Product under this Agreement, which event or circumstance was not anticipated as of the date the purchase or sale was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of PGE's markets; (ii) PGE's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Counterparty's supply; or (iv) Counterparty's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

4.2 Occurrence and Notice.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such transaction. The Claiming Party shall remedy the Force Majeure with all reasonable

dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

4.3 Obligations.

No Party shall be relieved by operation of this Article 4 of any liability to pay for Products delivered hereunder or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

ARTICLE 5 EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

5.1.1 the occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party establishes and maintains for so long as the Material Adverse Change is continuing, Performance Assurance to the Non-Defaulting Party in an amount determined by the Non-Defaulting Party in a commercially reasonable manner;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

5.1.3 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

5.1.4 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article 6);

5.1.5 such Party becomes Bankrupt;

5.1.6 the failure of such Party to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement;

5.1.7 the occurrence of a Merger Event with respect to such Party or its Guarantor;

5.1.8 the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified for

such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in Section 1.1.15) which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party or any other party specified for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount as specified herein;

5.1.9 the occurrence of a Letter of Credit Default;

5.1.10 with respect to such Party's Guarantor, if any:

5.1.10.1 any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

5.1.10.2 the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement;

5.1.10.3 the Guarantor becomes Bankrupt;

5.1.10.4 the failure of the Guarantor's Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Counterparty under this Agreement to which such Guaranty shall relate without the written consent of PGE; or

5.1.10.5 the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

5.1.10.6 the occurrence of a Guaranty Default.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Contract Term and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date and the Termination Payment (hereinafter defined) payable hereunder shall be calculated in accordance with Section 5.2.2 below.

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. However, it is expressly agreed that (i) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment (as hereafter defined) and (ii) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges. At the time for payment of any amount due under this Section 5.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (i) all Settlement Amounts that are due to the Defaulting Party, plus any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 9, plus any or all other amounts due to the Defaulting Party under this Agreement against (ii) all Settlement Amounts that are due to the Non-Defaulting Party, plus any cash or other form of security then available to the Defaulting Party pursuant to Article 9, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is due from the Defaulting Party, the Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early

Termination Date have been fully and finally performed, or (ii) 180 days after the Early Termination Date.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the purchases or sales are not yet liquidated in accordance with Section 5.3, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance.

Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Scheduled Product unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.4 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 6 REMEDIES FOR FAILURE TO DELIVER/RECEIVE

6.1 Remedy for Counterparty's Failure to Deliver.

6.1.1 Liquidated Damages Due to PGE. If Counterparty fails to Schedule and/or deliver all or part of the Product pursuant to this Agreement, and such failure is not excused under the terms of this Agreement or by PGE's failure to perform, then Counterparty shall pay PGE within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the

Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.1.2 Calculation of Replacement Price. The Replacement Price in regard to any Product Scheduled but not delivered to PGE by Counterparty shall be the price at which PGE either:

- (i) purchased for delivery at the Delivery Point a replacement for any such Product in a commercially reasonable manner, adding any:
 - (a) costs reasonably incurred by PGE in replacing such Product; and
 - (b) additional transmission charges, if any, reasonably incurred by PGE in delivering such Product to the Delivery Point;
- (ii) or, absent a purchase, then the market price at the Delivery Point for such Product not delivered as determined by PGE in a commercially reasonable manner.

However, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall PGE be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Counterparty's liability.

6.2 PGE's Failure to Receive.

6.2.1 Liquidated Damages Due to Counterparty. If PGE fails to receive all or part of the Product Scheduled pursuant to this Agreement and such failure is not excused under the terms of this Agreement or by Counterparty's failure to perform, then PGE shall pay Counterparty, on the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.2.2 Calculation of Sales Price. The Sales Price in regard to any Product Scheduled but not received by PGE shall be the price at which Counterparty:

- (i) resells for delivery any such Product in a commercially reasonable manner, deducting from such proceeds any:
 - (a) costs reasonably incurred by Counterparty in reselling such Product; and

- (b) additional transmission charges, if any, reasonably incurred by Counterparty in delivering such Product to the third party purchasers.
- (ii) or, absent a sale, the market price at the Delivery Point for such Product not received as determined by Counterparty in a commercially reasonable manner.

However, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Counterparty be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize PGE's liability.

6.3 Duty to Mitigate.

Subject to Sections 6.1.2 and 6.2.2, each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

6.4 Acknowledgement of the Parties.

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as an unreasonable penalty. If either Party fails to pay undisputed amounts in accordance with this Article 6 when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article 6 shall be the sole and exclusive remedy of the Parties of the failure of Counterparty to sell and deliver, and PGE to purchase and receive, the Quantity of Product and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 shall be submitted to arbitration in accordance with the arbitration procedures set forth in Article 17.

6.5 Survival.

The provisions of this Article 6 shall survive the expiration or termination for any reason of this Agreement.

ARTICLE 7 PAYMENT AND NETTING

7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the Month shall be the standard period for all payments under this Agreement (other than for Counterparty or PGE failure under Sections 6.1 and 6.2 respectively and for termination

in Section 5.4). On or before the tenth (10th) day of each Month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties in this Agreement, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, including any related damages calculated pursuant to Article 6 (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article 6),

interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article 6, interest, and payments or credits, that Party shall pay such sum in full when due.

**ARTICLE 8
LIMITATIONS**

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**ARTICLE 9
CREDIT AND COLLATERAL REQUIREMENTS**

The applicable credit and collateral requirements shall be as follows.

9.1 Financial Information.

If requested by a Party, the other Party shall deliver (i) within 120 days following the end of each fiscal year, a copy of such Party's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the other Party diligently pursues the preparation, certification and delivery of the statements.

9.2 Collateral and Security.

The Parties agree that, in order to secure the obligations of Counterparty to PGE hereunder, subject to Section 9.3 below, Counterparty under this Agreement shall at PGE's request:

9.2.1 cause its Guarantor to execute and deliver to PGE a Guaranty agreement in a form and amount reasonably acceptable to PGE. Such Guaranty shall be delivered prior to the execution and delivery of this Agreement; or

9.2.2 establish and maintain an escrow account for the benefit of PGE in a form and amount reasonably acceptable to PGE. Evidence of such escrow account shall be delivered concurrently with the execution and delivery of this Agreement. The costs of such escrow account shall be borne by Counterparty; or

9.2.3 provide a cash deposit in an amount reasonably acceptable to PGE. Such cash deposit shall be delivered to PGE concurrently with the execution and delivery of this Agreement; or

9.2.4 provide a Letter of Credit in a form and amount reasonably acceptable to PGE. Such Letter of Credit shall be delivered concurrently with the execution and delivery of this Agreement.

9.3 Provision of Performance Assurance.

If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to PGE exceeds Counterparty's Collateral Threshold, then PGE, on any Business Day, may request that Counterparty provide Performance Assurance in an amount equal to the lesser of (i) the remaining period of the Contract Term or (ii) for a period of twenty-four (24) months commencing from the date PGE provides notice to Counterparty of such required Performance Assurance, (rounding upwards for any fractional amount to the next Rounding Amount), less any Performance Assurance already posted with PGE. Such Performance Assurance shall be delivered to

PGE within two (2) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Counterparty, at its sole cost, may request that such Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment (rounding downwards for any fractional amount to the next Rounding Amount). In the event that Counterparty fails to provide Performance Assurance pursuant to the terms of this Article 9 within two (2) Business Days, then an Event of Default under Article 5 shall be deemed to have occurred and PGE will be entitled to the remedies set forth in Article 5 of this Agreement. For purposes of this Section 9.3, the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by PGE as if this Agreement had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Counterparty to PGE.

9.4 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Counterparty delivers Performance Assurance hereunder, Counterparty (the "Pledgor") hereby grants to PGE (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PGE, and Pledgor agrees to take such action as the Secured Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Counterparty, PGE may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of Counterparty in the possession of PGE or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of PGE free from any claim or right of any nature whatsoever of Counterparty, including any equity or right of purchase or redemption by Counterparty. PGE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to PGE after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.5 Holding Performance Assurance.

PGE will be entitled to hold Performance Assurance in the form of cash provided that the following conditions are satisfied: (i) PGE is not a Defaulting Party and has a Credit Rating that is BBB- or higher by S&P or Baa3 or higher by Moody's and (ii) Performance Assurance may be held only in a jurisdiction within the United States.

9.6 Delivery of Performance Assurance.

Upon the occurrence and during the continuance of a Material Adverse Change or an Event of Default with respect to PGE, PGE shall deliver (or cause to be delivered) not later than two (2) Business Days after request by Counterparty, all Performance Assurance in its possession or held on its behalf by a financial institution, to a segregated, safekeeping or custody account ("Collateral Account") within a financial institution that is a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank, with such bank having shareholder's equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P approved by Counterparty (which approval shall not be unreasonably withheld). The title of the Collateral Account shall indicate that the property contained therein is being held as Performance Assurance for PGE. The financial institution shall serve as custodian with respect to the Performance Assurance in the Collateral Account and shall hold such Performance Assurance for the security interest of PGE and, subject to the security interest, for the ownership of the Counterparty.

9.7 Performance Assurance Event of Default.

Failure by PGE to comply with any of the obligations under Section 9.6 will constitute an Event of Default with respect to PGE if the failure continues for two (2) Business Days after notice of the failure is given to PGE.

9.8 Interest Rate on Cash Collateral.

Performance Assurance in the form of cash shall bear interest at the Interest Rate on Cash Collateral and shall be paid to the Pledgor on the third Business Day of each calendar month. "Interest Rate on Cash Collateral" means the lesser of (i) the maximum amount allowed by applicable law and (ii) the Federal Funds Rate for the holding period. The "Federal Funds Rate" means the effective Federal Funds Rate as published daily by the Federal Reserve Bank H.15 Statistical Release website for each day of the holding period. Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days.

ARTICLE 10
GOVERNMENTAL CHARGES

10.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Non-Sale Related Governmental Charges and Taxes.

Counterparty shall pay or cause to be paid all charges or taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product arising prior to the Delivery Point. PGE shall pay or cause to be paid all Governmental

Charges on or with respect to the Product at and from the Delivery Point (other than those related to the sale of the Product and are, therefore, the responsibility of the Counterparty). In the event Counterparty is required by law or regulation to remit or pay Governmental Charges which are PGE's responsibility hereunder, PGE shall promptly reimburse Counterparty for such Governmental Charges. If PGE is required by law or regulation to remit or pay Governmental Charges which are Counterparty's responsibility hereunder, PGE may deduct the amount of any such Governmental Charges from the sums due to Counterparty under Article 7 of this Agreement. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

10.3 Sale-related Governmental Charges and Taxes.

In addition to all other payments required under this Agreement, Counterparty shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the Product sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) up to the delivery of such Product to the Delivery Point.

10.4 Indemnification.

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the Product sold, delivered and received hereunder that are the responsibility of such Party pursuant to this Article 10.

ARTICLE 11
MARKET DISRUPTION

11.1 Occurrence.

If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined pursuant to the Price Source specified in the Agreement for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the First Trading Day on which the Market Disruption event occurred or existed, then the Floating Price shall be determined in good faith by PGE, by taking the average of two or more dealer quotes from an equal number of dealers selected by each Party.

11.2 Remedy.

For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement with thirty (30) days of the date of delivery, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1) and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

**ARTICLE 12
RATES AND TERMS BINDING;
FERC STANDARD OF REVIEW**

12.1 Mobile-Sierra Doctrine.

12.1.1 The Parties, for themselves and their respective successors and assigns, agree that the standard of review for proposed changes to any section of this Agreement, or to any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, that specifies the rate(s) or other material economic terms and conditions agreed to by the Parties, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). The Parties, for themselves and their respective successors and assigns, hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

12.1.2 To the extent FERC adopts in a final or subsequent policy statement ("FPS") the use of specific language which varies from that set out in 12.1.1 above, then 12.1.1 above shall, without further action of either Party, be deemed amended to reflect such specific language, provided that to the extent that the specific language adopted in an FPS is in any way inconsistent with the mutual intent of the Parties in this regard as currently set forth in 12.1.1 above, then the Parties agree to meet to attempt to negotiate in good faith an amendment to this section to address such inconsistencies, provided further that neither Party shall be obligated in any way to agree to any such amendment.

**ARTICLE 13
REPRESENTATIONS AND WARRANTIES; INDEMNITY**

13.1 Representations and Warranties.

On the Effective Date and throughout the Contract Term, each Party represents and warrants to the other Party that:

13.1.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

13.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

13.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

13.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

13.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

13.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

13.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

13.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement thereto and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

13.1.9 it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

13.1.10 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

13.1.11 with respect to this Agreement; involving the purchase or sale of a Product, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such; and

13.1.12 the material economic terms of this Agreement were subject to individual negotiation by the Parties.

13.2 Indemnity.

To the fullest extent permitted by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any Indemnity Claims caused by, resulting from, relating to or arising out of any act or incident involving or related to the Product, Energy or capacity and occurring at any time when such Product, Energy or capacity is under the Indemnitor's possession and control; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee.

13.3 Additional Representation and Warranty of Counterparty.

Counterparty hereby further represents and warrants to PGE that (i) Counterparty has the right to sell the Product, (ii) Counterparty has title to the Product sold under this Agreement, and (iii) no change has occurred in Counterparty's authorization to sell power at market-based rates pursuant to FERC Dockets Number ER_____.

**ARTICLE 14
TITLE AND RISK OF LOSS**

Title and risk of loss related to the Product shall transfer from Counterparty to PGE at the Delivery Point. Counterparty warrants that it will deliver to PGE the Contract Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

**ARTICLE 15
ASSIGNMENT; BINDING EFFECT**

15.1 Assignment.

Neither Party shall assign this Agreement or its rights hereunder to any entity whose Credit Rating is not equal to or higher than that of such Party and is at least above BBB- by S&P and Baa3 by Moody's. No assignment may be made without the

prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's Credit Rating is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets whose Credit Rating is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.2 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

**ARTICLE 16
GOVERNING LAW**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAW. FOR ANY DISPUTE HELD NOT ARBITRABLE HEREUNDER EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION RELATING TO SUCH DISPUTE.

**ARTICLE 17
ARBITRATION**

Any claim, counterclaim, demand, cause of action, dispute, and controversy arising out of or relating to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of this Agreement, involving the Parties and/or their respective representatives (for purposes of this Article 17 only, collectively the "Claims"), even though some or all of such Claims allegedly are extra-contractual in nature, whether such Claims sound in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, for damages or any other relief, shall be resolved by binding arbitration. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Parties' Claims, the arbitrators shall refer to the

governing law. It is agreed that the arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or under the Federal Arbitration Act, or under the Commercial Arbitration Rules of the American Arbitration Association, the Parties hereby waiving their right, if any, to recover any such damages. The arbitration proceeding shall be conducted in Portland, Oregon. Within thirty (30) days of the notice of initiation of the arbitration procedure, each party shall select one arbitrator. The two (2) arbitrators shall select a third arbitrator. The third arbitrator shall be a person who has over eight years professional experience in electrical energy-related contractual arrangements and who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two party-appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two party-appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the Party that appointed such arbitrator. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties.

ARTICLE 18 RECORDS AND AUDIT

18.1 Records.

Each Party shall keep proper books of records and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to this Agreement in accordance with generally accepted accounting principles consistently applied.

18.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

ARTICLE 19 GENERAL PROVISIONS

19.1 General.

This Agreement (including the exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all transactions under this Agreement constitute the entire agreement between the Parties relating to the subject matter.

Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect remaining transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.2 Entirety.

This Agreement and the Appendices and Exhibits hereto constitute the entire agreement between the Parties and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

19.3 Non-Waiver.

No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.4 Severability.

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

19.5 Survival.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

19.6 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

19.7 No Third Party Beneficiaries.

Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

19.8 Relationships of Parties.

The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this letter, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

19.9 Headings and Exhibits.

The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all Exhibits and Appendices referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

ARTICLE 20 CONFIDENTIALITY

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

ARTICLE 21 NOTICES AND COUNTERPARTS

21.1 Notices.

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or facsimile), or other documentary form. Notice by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day); provided that Scheduling and Dispatch notifications and notifications of changes in availability of the Facility sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, courier or facsimile. Notice by telephone shall be deemed to have been received at the time the call is received.

21.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 21.1.1.

21.2 Counterparts.

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Purchase and Sale Agreement for Firm Energy to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**PORTLAND GENERAL ELECTRIC
COMPANY**

[Counterparty]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A

NOTICES

Party: Portland General Electric Company [“Counterparty”]
(or “PGE”), an Oregon corporation

All Notices:

Street: 121 SW Salmon Street

City: Portland, OR 97204

Attn: General Manager, Power Contracts;
3WTCBR06

Phone: (503) 464-7343

Facsimile: (503) 464-2605

Duns: 00-790-9054

Federal Tax ID Number: 93-0256820

All Notices:

Street:

City:

Attn:

Phone:

Facsimile:

Duns:

Federal Tax ID Number:

Invoices:

Attn: Risk Management

Phone: (503) 464-7375

Facsimile: (503) 464-7126

Invoices:

Attn:

Phone:

Facsimile:

Scheduling:

Attn: Manager Power Coordination

Phone: (503) 464-7374

Facsimile: (503) 464-2605

Scheduling:

Attn:

Phone:

Facsimile:

Payments:

Attn: Accounts Payable

Phone: (503) 464-7126

Facsimile: (503) 464-2605

Payments:

Attn:

Phone:

Facsimile:

Wire Transfer:

BNK: United States National Bank of
Oregon-Portland

ABA: 123000220

ACCT: #153600063512

NAME: Portland General Electric
Company

Wire Transfer:

BNK:

ABA:

ACCT:

Credit and Collections:

Attn: Credit Manager

Phone: (503) 464-8770

Facsimile: (503) 464-2605

Credit and Collections:

Attn:

Phone:

Facsimile:

With additional Notices of an Event of
Default to:

Attn: General Counsel
Phone: (503) 464-8850
Facsimile: (503) 464-2200

With additional Notices of an Event of
Default to:

Attn:
Phone:
Facsimile:

APPENDIX M

**PHYSICAL CAPACITY
WHOLESALE POWER PURCHASE and SALE AGREEMENT**

Between

Portland General Electric Company

And

[Counterparty]

This WHOLESALE POWER PURCHASE AND SALE AGREEMENT for Physical Capacity ("Agreement") is entered into effective as of the _____ day of _____, 2003 ("Effective Date"), by and between *Counterparty*, a [STATE] corporation ("Counterparty"), and Portland General Electric Company, an Oregon corporation ("PGE"). Counterparty and PGE are also sometimes referred to herein individually as a "Party" and collectively as the "Parties."

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions.

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

1.1.1 "Affiliate" means, with respect to a Party, any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power. For the purposes of this Agreement, except for Section 15.1, PGE will be deemed to have no Affiliates.

1.1.2 "Agreement" means this Wholesale Power Purchase and Sale Agreement for Physical Capacity entered into between Counterparty and PGE and all incorporated appendices, exhibits, schedules and attachments hereto, as may be amended by the Parties from time to time.

1.1.3 "Ancillary Services" means all ancillary products associated, in accordance with Prudent Electric Industry Practice, with the generation of electrical Energy, including, without limitation, spinning reserves, non-spinning reserves, reactive power and voltage control.

1.1.4 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.1.5 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

1.1.6 “Capacity” means firm electric generating capability, expressed in megawatts (MW).

1.1.7 “Capacity Charge” means USD ____/kW Month.

1.1.8 “Claiming Party” has the meaning set forth in Section 4.2.

1.1.9 “Collateral Threshold” means, with respect to PGE, \$ ____ in USD (or its equivalent in another currency), and with respect to Counterparty \$ ____ in USD (or its equivalent in another currency), provided, however, that a Party’s Collateral Threshold shall be zero (\$0) upon the occurrence and during the continuance of an Event of Default, or Material Adverse Change with respect to such Party.

1.1.10 “Contract Price” means the Capacity Charge, Energy Charge, and any of the charges which have been agreed to by the Parties in this Agreement.

1.1.11 “Contract Quantity” means that MWh quantity of the Product that Counterparty agrees to make available or sell and deliver, or cause to be delivered, to PGE, and that PGE agrees to purchase and receive, or cause to be received, from Counterparty as specified in this Agreement.

1.1.12 “Contract Term” means the period of time referenced in Section 2.1.

1.1.13 “Control Area” means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generator within the electric power system(s) and the capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Utility Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Utility Practice.

1.1.14 “Costs” means, with respect to a Party, brokerage fees, commissions and other similar third party Transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering or terminating any arrangement pursuant to which it has hedged its obligations.

1.1.15 “Counterparty” means _____, the Party to this Agreement that is obligated to sell and deliver and, or cause to be delivered, the Product to PGE, as specified in this Agreement.

1.1.16 “Credit Rating” means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not

supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody's, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody's with respect to such entity's long-term, unsecured, unsubordinated deposits.

1.1.17 "Cross Default Amount" means with respect to Counterparty or its Guarantor, if applicable, \$_____ in USD (or its equivalent in another currency), and with respect to PGE \$_____ USD (or its equivalent in another currency).

1.1.18 "Daily" means any 24-Hour period commencing at 0000 Hours.

1.1.19 "Defaulting Party" has the meaning set forth in Section 5.1.

1.1.20 "Delivery" means Energy is delivered by Counterparty to PGE.

1.1.21 "Delivery Period" has the meaning set forth in Section 2.2.

1.1.22 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Scheduling notice.

1.1.23 "Determination Period" means each Month during the Contract Term for the Agreement; provided that if the remaining term of the Agreement is less than one Month, the Determination Period shall be the remaining term of the Agreement.

1.1.24 "Early Termination Date" has the meaning set forth in Section 5.2.1.

1.1.25 "Effective Date" is the day on which this Agreement goes into effect.

1.1.26 "Energy" means electric energy, expressed in megawatt hours ("MWh"), delivered by Counterparty to PGE pursuant to this Agreement.

1.1.27 "Energy Charge" means USD _____.

1.1.28 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.1.29 "Event of Default" has the meaning set forth in Section 5.1.

1.1.30 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.1.31 "Firm" used in the context of "Firm" Capacity or Energy means the only excuse for the interruption of delivery of the Product is if the interruption is excused by Force Majeure.

1.1.32 "Floating Price" means the price specified in this Agreement that is based upon a Price Source.

1.1.33 “Force Majeure” is defined in Section 4.1.

1.1.34 “Gains” means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.35 “Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; provided, however, that “Governmental Authority” shall not in any event include either Party.

1.1.36 “Governmental Charges” means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities or any Transmission Provider that would affect the sale and purchase of a Product contemplated by this Agreement, either directly or indirectly.

1.1.37 “Guarantor” means, with respect to Counterparty, _____.

1.1.38 “Guaranty” means an instrument or agreement pursuant to which a Guarantor guarantees the performance of each and all of the obligations of a Counterparty, which instrument or agreement is reasonably acceptable in form and substance to PGE.

1.1.39 “Guaranty Default” means with respect to a Guaranty or the Guarantor thereunder, the occurrence of any of the following events: (i) any representation or warranty made or deemed to be made or repeated by such Guarantor in connection with such Guaranty shall be false or misleading in any material respect when made or when deemed made or repeated; (ii) such Guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (iii) the failure of such Guarantor to comply with or timely perform any other material covenant or obligation set forth in such Guaranty if such failure is not capable of remedy or shall not be remedied in accordance with the terms and conditions of such Guaranty; (iv) a Merger Event occurs with respect to such Guarantor; (v) such Guaranty shall expire or terminate, or shall fail or cease to be in full force and effect and enforceable in accordance with its terms against such Guarantor, prior to the satisfaction of all obligations of the guaranteed Party under this Agreement, in any such case without replacement; (vi) such Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, its Guaranty, or (vii) such Guarantor becomes Bankrupt; provided, however, that no Guaranty Default shall occur or be continuing in any event with respect to a Guaranty after the time such Guaranty is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

1.1.40 “Indemnatee” has the meaning set forth in Section 13.2.

1.1.41 “Indemnitor” has the meaning set forth in Section 13.2.

1.1.42 “Indemnity Claims” means all third party claims or actions, threatened or filed, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether resulting from a settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.1.43 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.1.44 “kW Month” means the number of kW per Month.

1.1.45 “Law” means any law, rule, regulation, order, writ, judgment, rulings or orders by or before any court or any governmental authority.

1.1.46 “Letter(s) of Credit” means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P, in a form and substance reasonably acceptable to the Party in whose favor the letter of credit is issued. The costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.1.47 “Letter of Credit Default” means with respect to a Letter of Credit the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Contract Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

1.1.48 “Losses” means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.49 “Market Disruption Event” means, with respect to any Price Source, any of the following events (the existence of which shall be determined in good faith by PGE): (a) the failure of the Price Source to report, publish or announce information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity in the market acting as the Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

1.1.50 “Material Adverse Change” means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Counterparty, Counterparty or Counterparty’s Guarantor, if applicable, shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Counterparty or Counterparty’s Guarantor is rated by only one service, a Material Adverse Change shall occur if such rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

1.1.51 “Merger Event” means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or other entity hereunder or under any Guaranty or Letter of Credit or other performance assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Guaranty, Letter of Credit, or other performance assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations hereunder, or (iii) the Credit Rating (from any of S&P or Moody’s) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or other entity immediately prior to such consolidation, amalgamation, merger, or transfer.

1.1.52 “Month” means a calendar month commencing at HE 0100 PPT on the first day of such month through HE 2400 PPT on the last day of such month.

1.1.53 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.1.54 “MW” means megawatt.

1.1.55 “MWh” means megawatt hour.

1.1.56 “Non-Defaulting Party” has the meaning set forth in Section 5.2.1.

1.1.57 “Off-Peak Hours” mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC designated holidays.

1.1.58 “On-Peak Hours” shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

1.1.59 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to PGE.

1.1.60 “Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

1.1.61 “PPT” means Pacific Prevailing Time, that is, prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

1.1.62 “Present Value” means a present value calculation derived by using a commercially reasonable discount rate for each remaining Month of the Contract Term.

1.1.63 “Price Source” means a nationally-recognized market price index, recognized and independent brokers or dealers active in the [Hub Name] Next Day physical power market) containing (or reporting) the specified price (or prices from which the specified price is calculated) set forth in this Agreement.

1.1.64 “Product” means electric capacity, energy or other product(s) related thereto as specified in this Agreement by the Parties.

1.1.65 “Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the facility’s equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.1.66 “Replacement Price” is described in Section 6.1.2.

1.1.67 “Rounding Amount” means \$250,000 in USD (or its equivalent in another currency).

1.1.68 “S&P” means the Standard & Poor’s, a division of McGraw-Hill Companies, Inc., or any successor thereto.

1.1.69 “Sales Price” is described in Section 6.2.2.

1.1.70 “Schedule,” “Scheduled” or “Scheduling” means the act of each Party or its designated representatives, including its Transmission Providers, if applicable, notifying, requesting and confirming to each other, on a preschedule, hourly schedule or real-time schedule basis, the quantity of the Product to be delivered hourly on any given day or days during the Delivery Term to and at and from the Energy Delivery Point according to customary WECC scheduling practices.

1.1.71 “Settlement Amount” means, with respect to an Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such party incurs as a result of the termination and liquidation this Agreement pursuant to Section 5.2.2.

1.1.72 “Taxes” means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [State Name] business and occupation tax and [State Name] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

1.1.73 “Termination Payment” has the meaning set forth in Section 5.3.

1.1.74 “Trading Day” means a day in respect of which the relevant Price Source reported, published or announced the Floating Price.

1.1.75 “Transmission Provider(s)” means any entity (including any FERC-authorized regional transmission organization) transmitting Energy on behalf of Counterparty to, and at and from, the Delivery Point; or on behalf of PGE to, and at and from the Delivery Point.

1.1.76 “Transmission Services” means any and all services (including but not limited to Ancillary Services and control area services) required for the transmission and delivery of Energy to the Delivery Point or at and from the Delivery Point.

1.1.77 “Transmission System(s)” means the transmission system(s) of the Transmission Provider(s) to be used by Counterparty for the purpose of transmitting Energy to the Delivery Point or by PGE for the purpose of transmitting Energy at and from the Delivery Point.

1.1.78 “USD” means United States Dollars.

1.1.79 “WECC” means the Western Electricity Coordinating Council or any successor thereto.

1.2 Interpretations.

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to Article Fifteen, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 Other grammatical forms of defined words or phrases have corresponding meanings.

1.2.5 A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.6 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.7 A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

1.2.8 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.9 References in this Agreement to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or").

1.2.10 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

1.3 Technical Meanings.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

ARTICLE 2 CONTRACT TERM, DELIVERY PERIOD, AND PRICE

2.1 Contract Term.

The term of this Agreement (the "Contract Term") shall commence on the Effective Date and continue through _____[Date], unless otherwise terminated in accordance with its terms; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and; provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations with respect to this Agreement under Article Six hereof.

2.2 Delivery Period.

The Product shall be made available by Counterparty during _____ [months] of each year, during the Contract Term set forth in Section 2.1. (the "Delivery Period").

2.3 Price.

PGE shall pay to Counterparty a Capacity Charge, and, if applicable, the Energy Charge.

2.4 Delivery Point

Commencing on the Effective Date and continuing throughout the Contract Term, Counterparty shall sell and deliver and PGE shall buy and receive at the Delivery Point Firm Capacity and associated Firm Energy as scheduled by PGE in accordance with Article 3.

ARTICLE 3 OBLIGATIONS AND DELIVERIES

3.1 Counterparty's and PGE's Obligations.

3.1.1 Counterparty shall sell and PGE shall purchase Firm Capacity and have the right to Schedule associated Firm Energy in a minimum amount of ____ MWs per Hour up to a maximum amount of ____ MWs per Hour as the Contract Quantity elected by PGE on a Daily basis throughout the Contract Term. PGE may Schedule Product during the Scheduling Period(s) for each day of the Delivery Period throughout the Contract Term. PGE may Schedule Product during On-Peak and Off-Peak hours of the Delivery Period. PGE may Schedule Firm Energy in minimum blocks of four (4) contiguous hours.

3.1.2 Counterparty's obligation to deliver the amount of Scheduled Firm Energy associated with Firm Capacity purchased by PGE shall be absolute and the only excuse

for failure of Counterparty to deliver the Firm Energy as Scheduled shall be a Force Majeure or PGE's failure to receive.

3.2 Delivery Point

The Delivery Point for Product delivered by Counterparty to PGE will be at PGE's system or any other alternate Delivery Point mutually agreed to by the Parties.

3.3 Transmission and Scheduling

3.3.1 Responsibility for Transmission and Scheduling. Counterparty shall arrange for, pay all costs, and be responsible for transmission service, including but not limited to control area services, spinning and supplemental reserves, imbalance and inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Provider(s), in accordance with the practice of the Transmission Provider(s), to deliver the Product to the Delivery Point. PGE shall arrange for, pay all costs, and be responsible for transmission service, including but not limited to control area services, spinning and supplemental reserves, imbalance and inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Provider(s) to receive the Firm Energy at the Delivery Point. Each Party shall designate authorized representatives to effect the Scheduling of Firm Energy.

3.3.2 Exercise of Option to Schedule Firm Energy. Under the terms of this Agreement, PGE may exercise its option to Schedule Firm Energy by notifying Counterparty on the customary Scheduling day by 6:30 PPT of its intent to schedule Firm Energy.

3.3.3 Preschedules. The Parties shall exchange preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 10:00:00 PPT on the last Business Day prior to the Scheduled date of delivery. The Parties' respective representatives shall maintain hourly real-time Schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. All schedules hereunder shall be accounted for on the basis of scheduled hourly quantities of Firm Energy at the Delivery Point, except that when deliveries are interrupted for any reason, schedules shall be reduced thereafter to reflect such interruptions. In case the scheduled deliveries and receipt of Firm Energy are not maintained for an entire hour, deliveries shall be pro-rated on a mutually agreed-upon basis. Counterparty and PGE shall maintain records of hourly energy schedules for accounting and operating purposes. All energy shall be pre-scheduled according to customary WECC scheduling practices. The final E-Tag shall be the controlling evidence of the Parties' Schedule.

ARTICLE 4 FORCE MAJEURE

4.1 Definition.

Force Majeure means an event or circumstance which prevents one Party from performing its obligations to deliver or receive Product under this Agreement, which event or circumstance was not anticipated as of the date the Product was Scheduled, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of PGE's markets; (ii) PGE's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Counterparty's supply; or (iv) Counterparty's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

4.2 Occurrence and Notice.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations hereunder and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such obligation. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

4.3 Obligations.

No Party shall be relieved by operation of this Article 4 of any liability to pay or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

**ARTICLE 5
EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

5.1.1 the occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party establishes and maintains for so long as the Material Adverse Change is continuing, Performance Assurance to the Non-Defaulting Party in an amount determined by the Non-Defaulting Party in a commercially reasonable manner;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

5.1.3 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

5.1.4 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article 6);

5.1.5 such Party becomes Bankrupt;

5.1.6 the failure of such Party to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement;

5.1.7 the occurrence of a Merger Event with respect to such Party or its Guarantor;

5.1.8 the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in Section 1.1.17) which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party or any other entity specified for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount;

5.1.9 the occurrence of a Letter of Credit Default;

5.1.10 *[If applicable]* with respect to such Party's Guarantor, if any:

5.1.10.1 any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

5.1.10.2 the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement;

5.1.10.3 the Guarantor becomes Bankrupt;

5.1.10.4 the failure of the Guarantor's Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under this Agreement to which such Guaranty shall relate without the written consent of the other Party; or

5.1.10.5 the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

5.1.10.6 the occurrence of a Guaranty Default.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Contract Term and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date and the Termination Payment (hereinafter defined) payable hereunder shall be calculated in accordance with Section 5.2.2 below.

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries under this Agreement. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. However, it is expressly agreed that (i) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment (as

hereafter defined) and (ii) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges. At the time for payment of any amount due under this Section 5.2, one Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (i) all Settlement Amounts that are due to the Defaulting Party, plus any cash or other form of security then available to the Non-Defaulting Party under this Agreement, plus any or all other amounts due to the Defaulting Party under this Agreement against (ii) all Settlement Amounts that are due to the Non-Defaulting Party, plus any cash or other form of security then available to the Defaulting Party under this Agreement, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed, or (ii) 180 days after the Early Termination Date.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After determination of the Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the purchases or sales are not yet liquidated in accordance with Section 5.3, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance.

Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than thirty (30) days unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.4 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 6
REMEDIES FOR FAILURE TO DELIVER/RECEIVE

6.1 Remedy for Counterparty's Failure to Deliver.

6.1.1 Liquidated Damages Due to PGE. If Counterparty fails to Schedule and/or deliver all or part of the Product pursuant to this Agreement, and such failure is not excused under the terms of this Agreement or by PGE's failure to perform, then Counterparty shall pay PGE within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.1.2 Calculation of Replacement Price. The Replacement Price in regard to any Product Scheduled but not delivered to PGE by Counterparty shall be the price at which PGE either:

6.1.2.1 purchased for delivery at the Delivery Point a replacement for any such Product in a commercially reasonable manner, adding any:

6.1.2.1.1 costs reasonably incurred by PGE in replacing such Product; and

6.1.2.1.2 additional transmission charges, if any, reasonably incurred by PGE in delivering such Product to the Delivery Point; or

6.1.2.2 absent a purchase, then the market price at the Delivery Point for such Product not delivered as determined by PGE in a commercially reasonable manner.

However, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall PGE be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Counterparty's liability.

6.2 PGE's Failure to Receive.

6.2.1 Liquidated Damages Due to Counterparty. If PGE fails to receive all or part of the Energy Scheduled under this Agreement and such failure is not excused under the terms of this Agreement or by Counterparty's failure to perform, then PGE shall pay Counterparty, on the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.2.2 Calculation of Sales Price. The Sales Price in regard to any Product Scheduled but not received by PGE shall be the price at which Counterparty:

6.2.2.1 resells for delivery any such Product in a commercially reasonable manner, deducting from such proceeds any:

6.2.2.1.1 costs reasonably incurred by Counterparty in reselling such Product; and

6.2.2.1.2 additional transmission charges, if any, reasonably incurred by Counterparty in delivering such Product to the third party purchasers at or near the Delivery Point; or

6.2.2.2 absent a sale, the market price at the Delivery Point for such Product not received as determined by Counterparty in a commercially reasonable manner.

However, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Counterparty be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize PGE's liability.

6.3 Duty to Mitigate.

Subject to Sections 6.1.2.2 and 6.2.2.2, each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to

minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

6.4 Acknowledgement of the Parties.

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as unreasonable or a penalty. If either Party fails to pay undisputed amounts under this Agreement when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article Six shall be the sole and exclusive remedy of the Parties of the failure of Counterparty to sell and deliver, and PGE to purchase and receive, the quantity of Product and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 shall be submitted to arbitration in accordance with the arbitration procedures set forth in Article 17.

6.5 Survival.

The provisions of this Article 6 shall survive the expiration or termination for any reason of this Agreement.

**ARTICLE 7
PAYMENT AND NETTING**

7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the calendar month shall be the standard period for all payments under this Agreement (other than for Counterparty or PGE failure under Sections 6.1 and 6.2 respectively and for termination in Section 5.4). On or before the tenth (10th) day of each Month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the Month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date under this Agreement through netting, in which case all amounts owed by one Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, including any related damages calculated pursuant to Article 6 (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article 6), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Six, interest, and payments or credits, that Party shall pay such sum in full when due.

**ARTICLE 8
LIMITATIONS**

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR

WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS

The applicable credit and collateral requirements shall be as follows.

9.1 Financial Information.

If requested by a Party, the other Party shall deliver (i) within 120 days following the end of each fiscal year, a copy of such Party's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the other Party diligently pursues the preparation, certification and delivery of the statements.

9.2 Collateral and Security.

The Parties agree that, in order to secure the obligations of Counterparty to PGE hereunder, subject to Section 9.3 below, Counterparty shall at PGE's request:

9.2.1 cause its Guarantor to execute and deliver to PGE a Guaranty agreement in a form and amount reasonably acceptable to PGE. Such Guaranty shall be delivered prior to the execution and delivery of this Agreement; or

9.2.2 establish and maintain an escrow account for the benefit of PGE in a form and amount reasonably acceptable to PGE. Evidence of such escrow account shall be delivered contemporaneously with the execution and delivery of this Agreement. The costs of such escrow account shall be borne by Counterparty; or

9.2.3 provide a cash deposit in an amount reasonably acceptable to PGE. Such cash deposit shall be delivered to PGE contemporaneously with the execution and delivery of this Agreement; or

9.2.4 provide a Letter of Credit in a form and amount reasonably acceptable to PGE. Such Letter of Credit shall be delivered contemporaneously with the execution and delivery of this Agreement.

9.3 Provision of Performance Assurance.

If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to PGE exceeds Counterparty's Collateral Threshold, then PGE, on any Business Day, may request that Counterparty provide Performance Assurance in an amount equal to the lesser of (i) the remaining period of the Contract Term or (ii) for a period of twenty-four (24) months commencing from the date PGE provides notice to Counterparty of such required Performance Assurance, (rounding upwards for any fractional amount to the next Rounding Amount), less any Performance Assurance already posted with PGE. Such Performance Assurance shall be delivered to PGE within two (2) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Counterparty, at its sole cost, may request that such Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment (rounding downwards for any fractional amount to the next Rounding Amount). In the event that Counterparty fails to provide Performance Assurance pursuant to the terms of this Article Nine within two (2) Business Days, then an Event of Default under Article 5 shall be deemed to have occurred and PGE will be entitled to the remedies set forth in Article 5 of this Agreement.

For purposes of this Section 9.3, the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by PGE as if this Agreement had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Counterparty to PGE.

9.4 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Counterparty delivers Performance Assurance hereunder, Counterparty (the "Pledgor") hereby grants to PGE (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PGE, and Counterparty agrees to take such action as PGE reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Counterparty, PGE may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of Counterparty in the possession of PGE or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of PGE free from any claim or right of any nature whatsoever of Counterparty, including any equity or right of purchase or redemption by Counterparty. PGE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to PGE after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.5 Holding Performance Assurance.

PGE will be entitled to hold Performance Assurance in the form of cash provided that the following conditions are satisfied: (i) PGE is not a Defaulting Party and has a Credit Rating that is BBB- or higher by S&P or Baa3 or higher by Moody's and (ii) Performance Assurance may be held only in a jurisdiction within the United States.

9.6 Delivery of Performance Assurance.

Upon the occurrence and during the continuance of a Material Adverse Change or an Event of Default with respect to PGE, PGE shall deliver (or cause to be delivered) not later than two (2) Business Days after request by Counterparty, all Performance Assurance in its possession or held on its behalf by a financial institution, to a segregated, safekeeping or custody account ("Collateral Account") within a financial institution that is a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank, with such bank having shareholder's equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P approved by Counterparty (which approval shall not be unreasonably withheld). The title of the Collateral Account shall indicate that the property contained therein is being held as Performance Assurance for PGE. The financial institution shall serve as custodian with respect to the Performance Assurance in the Collateral Account and shall hold such Performance Assurance for the

security interest of PGE and, subject to the security interest, for the ownership of Counterparty.

9.7 Performance Assurance Event of Default.

Failure by PGE to comply with any of the obligations under Section 9.6 will constitute an Event of Default with respect to PGE if the failure continues for two (2) Business Days after notice of the failure is given to PGE.

9.8 Interest Rate on Cash Collateral.

Performance Assurance in the form of cash shall bear interest at the Interest Rate on Cash Collateral and shall be paid to the Pledgor on the third Business Day of each calendar month. "Interest Rate on Cash Collateral" means the lesser of (i) the maximum amount allowed by applicable law and (ii) the Federal Funds Rate for the holding period. The "Federal Funds Rate" means the effective Federal Funds Rate as published daily by the Federal Reserve Bank H.15 Statistical Release website for each day of the holding period. Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 365 days.

ARTICLE 10 GOVERNMENTAL CHARGES

10.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Non-Sale Related Governmental Charges and Taxes.

Counterparty shall pay or cause to be paid all charges or taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product arising prior to the Delivery Point. PGE shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than those related to the sale of the Product and are, therefore, the responsibility of Counterparty). In the event Counterparty is required by law or regulation to remit or pay Governmental Charges which are PGE's responsibility hereunder, PGE shall promptly reimburse Counterparty for such Governmental Charges. If PGE is required by law or regulation to remit or pay Governmental Charges which are Counterparty's responsibility hereunder, PGE may deduct the amount of any such Governmental Charges from the sums due to Counterparty under Article 7 of this Agreement. However, nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

10.3 Sale-related Governmental Charges and Taxes.

In addition to all other payments required under this Agreement, Counterparty shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the Product sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) to the Delivery Point.

10.4 Indemnification.

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the energy sold, delivered and received hereunder that are the responsibility of such Party pursuant to this Article 10.

ARTICLE 11
MARKET DISRUPTION

11.1 Occurrence.

If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined pursuant to the Price Source specified in this Agreement for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the First Trading Day on which the Market Disruption event occurred or existed, then the Floating Price shall be determined in good faith by PGE, by taking the average of two or more dealer quotes from an equal number of dealers selected by each Party.

11.2 Remedy.

For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within thirty (30) days of the date of delivery, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days of the effectiveness of that notice, pay that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1) and if the

fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

ARTICLE 12 RATES AND TERMS BINDING; FERC STANDARD OF REVIEW

12.1 Mobile-Sierra Doctrine.

12.1.1 The Parties, for themselves and their respective successors and assigns, agree that the standard of review for proposed changes to any section of this Agreement, or to any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, that specifies the rate(s) or other material economic terms and conditions agreed to by the Parties, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). **The Parties, for themselves and their respective successors and assigns, hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.**

12.1.2 To the extent FERC adopts in a final or subsequent policy statement (“FPS”) the use of specific language which varies from that set out in Section 12.1.1 above, then Section 12.1.1 above shall, without further action of either Party, be deemed amended to reflect such specific language, provided that to the extent that the specific language adopted in an FPS is in any way inconsistent with the mutual intent of the Parties in this regard as currently set forth in 12.1.1 above, then the Parties agree to meet to attempt to negotiate in good faith an amendment to this section to address such inconsistencies, provided further that neither Party shall be obligated in any way to agree to any such amendment.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES;

13.1 Representations and Warranties.

On the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

13.1.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

13.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

13.1.3 the execution, delivery and performance of this Agreement; are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

13.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

13.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

13.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

13.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

13.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

13.1.9 it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

13.1.10 it has entered into this Agreement; in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

13.1.11 with respect to this Agreement; involving the purchase or sale of a Product, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such; and

13.1.12 the material economic terms of this Agreement were subject to individual negotiation by the Parties.

13.2 Indemnity.

To the fullest extent permitted by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any Indemnity Claims caused by, resulting from, relating to or arising out of any act or incident involving or related to any Firm Capacity or associated Firm Energy and occurring at any time when such Firm Capacity or associated Firm Energy is under the Indemnitor's possession and control; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee.

**ARTICLE 14
TITLE AND RISK OF LOSS**

Title and risk of loss related to the Product shall transfer from Counterparty to PGE at the Delivery Point. Counterparty warrants that it will deliver to PGE the Contract Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

**ARTICLE 15
ASSIGNMENT; BINDING EFFECT**

15.1 Assignment.

Neither Party shall assign this Agreement or its rights hereunder to any entity whose Credit Rating is not equal to or higher than that of such Party and is at least above BBB- by S&P and Baa3 by Moody's. No assignment may be made without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's Credit Rating is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets whose Credit Rating is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.2 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

**ARTICLE 16
GOVERNING LAW**

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAW. FOR ANY DISPUTE HELD NOT ARBITRABLE HEREUNDER EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION RELATING TO SUCH DISPUTE.

ARTICLE 17 ARBITRATION

Any claim, counterclaim, demand, cause of action, dispute, and controversy arising out of or relating to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of this Agreement, involving the Parties and/or their respective representatives (for purposes of this Article Seventeen only, collectively the "Claims"), even though some or all of such Claims allegedly are extra-contractual in nature, whether such Claims sound in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, for damages or any other relief, shall be resolved by binding arbitration. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Parties' Claims, the arbitrators shall refer to the governing law. It is agreed that the arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or under the Federal Arbitration Act, or under the Commercial Arbitration Rules of the American Arbitration Association, the Parties hereby waiving their right, if any, to recover any such damages. The arbitration proceeding shall be conducted in Portland, Oregon. Within thirty (30) days of the notice of initiation of the arbitration procedure, each party shall select one arbitrator. The two (2) arbitrators shall select a third arbitrator. The third arbitrator shall be a person who has over eight years professional experience in electrical energy-related contractual arrangements and who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two party-appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two party-appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the Party that appointed such arbitrator. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties.

ARTICLE 18 RECORDS AND AUDIT

18.1 Records.

Each Party shall keep proper books of records and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to this Agreement in accordance with generally accepted accounting principles consistently applied.

18.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

ARTICLE 19 GENERAL PROVISIONS

19.1 General.

This Agreement (including the exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties Schedules under this Agreement constitute the entire agreement between the Parties relating to the subject matter.

Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect remaining performance under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.2 Entirety.

This Agreement and the appendices and Exhibits hereto constitute the entire agreement between the Parties and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters which, in accordance with the

express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

19.3 Non-Waiver.

No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.4 Severability.

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

19.5 Survival.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

19.6 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

19.7 Relationships of Parties.

The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

19.8 Headings and Exhibits.

The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all Exhibits and Appendices referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

ARTICLE 20 CONFIDENTIALITY

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

ARTICLE 21 NOTICES AND COUNTERPARTS

21.1 Notices.

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or facsimile), or other documentary form. Notice by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day); provided that Scheduling and Dispatch notifications sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, courier or facsimile. Notice by telephone shall be deemed to have been received at the time the call is received.

21.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 21.1.1

21.2 Counterparts.

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Purchase and Sale Agreement for Physical Capacity to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

PORTLAND GENERAL ELECTRIC COMPANY [COUNTERPARTY]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
NOTICES

Portland General Electric Company ("PGE")

All Notices:

Street: 121 SW Salmon Street

City: Portland, Oregon 97204

Attn: General Manager, Power Contracts;
3WTCBR06

Phone: (503) 464-7343

Facsimile: (503) 464-2605

Duns: 00-790-9054

Federal Tax ID Number: 93-0256820

Invoices:

Attn: Accounts Payable

Phone: (503) 464-7126

Facsimile: 464-7006

Scheduling:

Attn: Manager Power Coordination

Phone: (503) 464-7241

Facsimile: (503) 464-2605

Wire Transfer:

BNK: United States National Bank of Oregon-
Portland

ABA: 123000220

ACCT: #153600063512

NAME: Portland General Electric Company

Credit and Collections:

Attn: Credit Manager

Phone: (503) 464-8770

Facsimile: (503) 464-2605

With additional Notices of an Event of Default or
Potential Event of Default to:

Attn: General Counsel

Phone: (503) 464-7822

Facsimile: (503) 464-2200

Counterparty ("Counterparty" or "Name")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

With additional Notices of an Event of Default or
Potential Event of Default to:

Attn: _____

Phone: _____

Facsimile: _____

APPENDIX N

**CAPACITY EXCHANGE
WHOLESALE POWER PURCHASE AND SALE AGREEMENT**

Between

Portland General Electric Company

And

[Counterparty]

This WHOLESALE POWER PURCHASE AND SALE AGREEMENT for [insert name of specific Capacity Exchange Product – see Exhibit B] Capacity Exchange (“Agreement”) is entered into effective as of the _____ day of _____, 200_ (“Effective Date”), by and between [Counterparty], a [STATE] corporation (“Counterparty”), and Portland General Electric Company, an Oregon corporation (“PGE”). Counterparty and PGE are also referred to herein individually as a “Party” and collectively as the “Parties.”

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

1.1.1 “Affiliate” means, with respect to a Party, any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power. For the purposes of this Agreement, except for Section 15.1, PGE will be deemed to have no Affiliates.

1.1.2 “Agreement” means this Wholesale Power Purchase and Sale Agreement for _____ Capacity Exchange entered into between Counterparty and PGE and all incorporated appendices, exhibits, schedules and attachments hereto, as may be amended by the Parties from time to time.

1.1.3 “Ancillary Services” means all ancillary products associated, in accordance with Prudent Electric Industry Practice, with the generation of electrical Energy, including, without limitation, spinning reserves, non-spinning reserves, reactive power and voltage control.

1.1.4 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.1.5 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

1.1.6 “Capacity” means firm electric generating capability, expressed in megawatts (MW).

1.1.7 “Capacity Charge” means USD _____/kW Month.

1.1.8 “Capacity Exchange Product” means “Daily Capacity Exchange Product” or “Short Term Capacity Exchange Product” or “Seasonal Capacity Exchange Product” as defined in Exhibit B.

1.1.9 “Claiming Party” has the meaning set forth in Section 4.2.

1.1.10 “Collateral Threshold” means, with respect to PGE, \$_____ in USD (or its equivalent in another currency), and with respect to Counterparty \$_____ in USD (or its equivalent in another currency), provided, however, that a Party’s Collateral Threshold shall be zero (\$0) upon the occurrence and during the continuance of an Event of Default, or Material Adverse Change with respect to such Party.

1.1.11 “Contract Price” means Capacity Charge, Energy Charge [*if applicable*], and any of the other charges which have been agreed to by the Parties under this Agreement.

1.1.12 “Contract Quantity” means that MWh quantity of the Product that Counterparty agrees to make available or sell and deliver, or cause to be delivered, to PGE, and that PGE agrees to purchase and receive, or cause to be received, from Counterparty; or the MWh quantity of the Product that PGE agrees to make available or sell and deliver, or cause to be delivered, to Counterparty and that Counterparty agrees to purchase and receive, or cause to be received, from PGE as specified in this Agreement.

1.1.13 “Contract Term” means the period of time referenced in Section 2.1.

1.1.14 “Control Area” means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generator within the electric power system(s) and the Capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Utility Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Utility Practice.

1.1.15 “Costs” means, with respect to a Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering or terminating any arrangement pursuant to which it has hedged its obligations.

1.1.16 "Counterparty" means _____, the Party to this Agreement that is obligated to sell and deliver and, or cause to be delivered, and accept for return from PGE, the Product, as specified in this Agreement.

1.1.17 "Credit Rating" means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody's with respect to such entity's long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody's, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody's with respect to such entity's long-term, unsecured, unsubordinated deposits.

1.1.18 "Cross Default Amount" means with respect to Counterparty or its Guarantor, if applicable, USD _____ (or its equivalent in another currency), and with respect to PGE, USD _____ (or its equivalent in another currency).

1.1.19 "Daily" means any 24-Hour period commencing at 0000 Hours.

1.1.20 "Defaulting Party" has the meaning set forth in Section 5.1.

1.1.21 "Delivery" means Exchange Energy is delivered by Counterparty to PGE.

1.1.22 "Delivery Period" has the meaning set forth in Section 2.2.

1.1.23 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Scheduling notice.

1.1.24 "Determination Period" means each Month during the Contract Term; provided that if the remaining term of the Agreement is less than one Month, the Determination Period shall be the remaining term of the Agreement.

1.1.25 "Early Termination Date" has the meaning set forth in Section 5.2.1.

1.1.26 "Effective Date" is the day on which this Agreement goes into effect.

1.1.27 "Energy" means electric energy, expressed in megawatthours ("MWh"), delivered by Counterparty to PGE, or returned by PGE to Counterparty pursuant to this Agreement.

1.1.28 "Energy Charge" means USD _____.

1.1.29 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.1.30 “Event of Default” has the meaning set forth in Section 5.1.

1.1.31 “Exchange Energy” means Firm Energy associated with Firm Capacity Exchange Product.

1.1.32 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.1.33 “Firm” used in the context of “Firm” Capacity or Exchange Energy means the only excuse for the interruption of delivery of the Product is if the interruption is excused by Force Majeure.

1.1.34 “Floating Price” means the price specified in this Agreement that is based upon a Price Source.

1.1.35 “Force Majeure” is defined in Section 4.1.

1.1.36 “Gains” means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.37 “Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law: provided, however, that “Governmental Authority” shall not in any event include either Party.

1.1.38 “Governmental Charges” means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities or any Transmission Provider that would affect sale and purchase of a Product contemplated by this Agreement, either directly or indirectly.

1.1.39 “Guarantor” means, with respect to Counterparty, _____.

1.1.40 “Guaranty” means an instrument or agreement pursuant to which a Guarantor guarantees the performance of each and all of the obligations of a Counterparty, which instrument or agreement is reasonably acceptable in form and substance to PGE.

1.1.41 “Guaranty Default” means with respect to a Guaranty or the Guarantor thereunder, the occurrence of any of the following events: (i) any representation or warranty made or deemed to be made or repeated by such Guarantor in connection with such Guaranty shall be false or misleading in any material respect when made or when deemed made or repeated; (ii) such Guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (iii) the failure of such Guarantor to comply with or timely perform any other material covenant or obligation set forth in such

Guaranty if such failure is not capable of remedy or shall not be remedied in accordance with the terms and conditions of such Guaranty; (iv) a Merger Event occurs with respect to such Guarantor; (v) such Guaranty shall expire or terminate, or shall fail or cease to be in full force and effect and enforceable in accordance with its terms against such Guarantor, prior to the satisfaction of all obligations of such Party under this Agreement, in any such case without replacement; (vi) such Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, its Guaranty, or (vii) such Guarantor becomes Bankrupt; provided, however, that no Guaranty Default shall occur or be continuing in any event with respect to a Guaranty after the time such Guaranty is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

1.1.42 “Indemnatee” has the meaning set forth in Section 13.2.

1.1.43 “Indemnitor” has the meaning set forth in Section 13.2.

1.1.43 “Indemnity Claims” means all third party claims or actions, threatened or filed, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether resulting from a settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.1.44 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.1.45 “kW” means kilowatt, and “kW Month” means the number of kW per Month.

1.1.46 “Law” means any law, rule, regulation, order, writ, judgment, rulings or orders by or before any court or any governmental authority.

1.1.47 “Letter(s) of Credit” means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholder’s equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P, in a form and substance reasonably acceptable to the Party in whose favor the letter of credit is issued. The costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.1.48 “Letter of Credit Default” means with respect to a Letter of Credit the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders’ equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody’s or A+ from S&P; (ii) the issuer of the

Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the Contract Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

1.1.49 “Losses” means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.50 “Market Disruption Event” means, with respect to any Price Source, any of the following events (the existence of which shall be determined in good faith by PGE): (a) the failure of the Price Source to report, publish or announce information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity in the market acting as the Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

1.1.51 “Material Adverse Change” means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Counterparty, Counterparty or Counterparty’s Guarantor, if applicable, shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody’s or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Counterparty or Counterparty’s Guarantor is rated by only one service, a Material Adverse Change shall occur if such rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

1.1.52 “Merger Event” means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or other entity hereunder or under any Guaranty or Letter of Credit or other performance assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Guaranty, Letter of Credit, or other performance assurance or credit support provided pursuant to this Agreement fail, at any time

following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations hereunder, or (iii) the Credit Rating (from any of S&P or Moody's) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or other entity immediately prior to such consolidation, amalgamation, merger, or transfer.

1.1.53 "Month" means a calendar month commencing at HE 0100 PPT on the first day of such month through HE 2400 PPT on the last day of such month.

1.1.54 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.1.55 "MW" means megawatt.

1.1.56 "MWh" means megawatt hour.

1.1.57 "Non-Defaulting Party" has the meaning set forth in Section 5.2.1.

1.1.58 "Off-Peak Hours" or shall mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC holidays.

1.1.59 "On-Peak Hours" shall mean all ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

1.1.60 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to PGE.

1.1.61 "Person" means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

1.1.62 "PPT" means Pacific Prevailing Time, that is, prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

1.1.63 "Present Value" means a present value calculation derived by using a commercially reasonable discount rate for each remaining Month of the Contract Term.

1.1.64 "Price Source" means a nationally-recognized market price index, recognized and independent brokers or dealers active in the [*Hub Name*] Next Day physical power market, containing (or reporting) the specified price (or prices from which the specified price is calculated) set forth in this Agreement.

1.1.65 "Product" means electric capacity, energy or other product(s) related thereto as specified in this Agreement by the Parties.

1.1.66 "Prudent Electric Industry Practice" means those practices, methods, standards and acts engaged in or approved by a significant portion of the

electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the facility's equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant period, as described in the immediate preceding sentence.

1.1.67 "Receipt Point" means the point at which the Product will be delivered and received, as specified in the Scheduling notice.

1.1.68 "Replacement Price" is described in Section 6.1.2.

1.1.68 "Return Delivery Period" means the period during which PGE is obligated to return Energy delivered by Counterparty during the Delivery Period.

1.1.69 "Rounding Amount" means \$250,000 in USD (or its equivalent in another currency).

1.1.70 "S&P" means the Standard & Poor's, a division of McGraw-Hill Companies, Inc., or any successor thereto.

1.1.71 "Sales Price" is described in Section 6.2.2.

1.1.72 "Schedule," "Scheduled" or "Scheduling" means the act of each Party or its designated representatives, including its Transmission Provider(s), if applicable, notifying, requesting and confirming to the other, on a preschedule, hourly schedule or real-time schedule basis, the quantity of Power to be delivered hourly on any given day or days during the Delivery Term to and at and from the Energy Delivery Point according to customary WECC scheduling practices.

1.1.73 "Settlement Amount" means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such Party incurs as a result of the termination and liquidation of this Agreement pursuant to Section 5.2.2.

1.1.74 "Taxes" means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [State Name] business and occupation tax and [State Name] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

1.1.75 “Termination Payment” has the meaning set forth in Section 5.3.

1.1.76 “Trading Day” means a day in respect of which the relevant Price Source reported, published or announced the Floating Price.

1.1.77 “Transmission Provider(s)” means any entity (including any FERC-authorized regional transmission organization) transmitting Energy on behalf of Counterparty to, and at and from, the Delivery Point; or on behalf of PGE to, and at and from the Delivery Point.

1.1.78 “USD” means United States Dollars.

1.1.79 “WECC” means the Western Electricity Coordinating Council or any successor thereto.

1.2 Interpretations.

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to Article 15, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 Other grammatical forms of defined words or phrases have corresponding meanings.

1.2.5 A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.6 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.7 A reference to a Party to this Agreement includes that Party’s successors and permitted assigns.

1.2.8 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to

that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.9 References in this Agreement to “or” shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, “or” shall be interpreted to mean “and/or” rather than “either/or”).

1.2.10 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

1.3 Technical Meanings.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

ARTICLE 2 CONTRACT TERM; DELIVERY PERIOD; PRICE

2.1 Contract Term.

The term of this Agreement (the “Contract Term”) shall begin on _____ (“Effective Date”) and shall continue through _____ [Date], unless otherwise terminated in accordance with its terms, provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and, provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations with respect to this Agreement under Article 6 hereof.

2.2 Delivery Period.

The Product shall be made available by Counterparty during the months of _____ [months] of each calendar year, during the Contract Term set forth in Section 2.1 (“Delivery Period”). The Product shall be returned by PGE during the Return Delivery Period.

2.3 Price.

PGE shall pay to Counterparty a Capacity Charge of USD \$ _____ /kW Month for Firm Capacity. Under the terms and conditions of this Agreement, the Parties agree that there shall be no charge for Exchange Energy which shall be delivered and returned during the Return Delivery Period. *[insert specific time period and conditions for a specific Capacity Exchange Product under the terms of this Agreement]*.

2.4 Delivery Point.

Commencing on the Effective Date and continuing throughout the Contract Term, Counterparty shall sell and deliver and PGE shall buy and receive at the Delivery Point Firm Capacity and associated Exchange Energy as scheduled by PGE in accordance with Article 3.

ARTICLE 3 OBLIGATIONS; DELIVERIES; SCHEDULING

3.1 Counterparty and PGE's Obligations.

3.1.1 Delivery of Exchange Energy.

Counterparty shall sell and PGE shall purchase and receive, and have the right to Schedule Exchange Energy in a minimum amount of ___ MWs per hour and ___ per day, up to a maximum amount of ___ MWs per Hour, and _____ MWs per day as a variable quantity elected by PGE on a daily basis during the Delivery Period throughout the Contract Term. Notwithstanding the foregoing, PGE may return Exchange Energy to Counterparty at any hour of the day during the Return Delivery Period in variable quantities. Return of Exchange Energy by PGE may precede Delivery of Exchange Energy by Counterparty.

3.1.2 Counterparty's Obligation to Deliver.

Counterparty's obligation to deliver the amount of Scheduled Exchange Energy associated with Firm Capacity purchased by PGE shall be absolute and the only excuse for failure of Counterparty to deliver the Exchange Energy as Scheduled shall be a Force Majeure or PGE's failure to receive. Counterparty shall deliver the Exchange Energy at all times as Scheduled to the Delivery Point(s) except in cases of Force Majeure or PGE's failure to receive.

3.1.3 Return of Exchange Energy.

PGE will return to Counterparty the same quality and quantity of Exchange Energy to the Delivery Point, during the Return Delivery Period, [*time period identified for the specific Capacity Exchange Product*] as that delivered by Counterparty, except that if, by the end of the Return Delivery Period [*insert time period identified for the specific Capacity Exchange Product*], the quantity of Firm Energy exchanged does not net to zero (0) MWh between Counterparty and PGE, the Parties shall [*insert specific treatment as per specific Capacity Exchange Product*].

3.2 Delivery Point.

The Delivery Point for Product delivered by Counterparty to PGE will be at PGE's system or any other alternate Delivery Point mutually agreed to by the Parties.

3.3 Transmission and Scheduling.

3.3.1 Responsibility for Transmission and Scheduling. Counterparty shall arrange for, pay all costs, and be responsible for transmission service, including but not limited to control area services, spinning and supplemental reserves, imbalances and inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, to the Delivery Point, and at and from the Delivery Point for Return Exchange Energy. Counterparty shall Schedule or arrange for Scheduling services with its Transmission Provider(s), in accordance with the practice of the Transmission Provider(s) to deliver the Exchange Energy to the Delivery Point and to receive the Return Exchange Energy at the Delivery Point.. PGE shall arrange, pay all costs, and be responsible for transmission service, including but not limited to control area services, spinning and supplemental reserves, imbalances and inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, at and from the Delivery Point, and to the Delivery Point for Return Exchange Energy. PGE shall Schedule or arrange for Scheduling services with its Transmission Provider(s) to receive the Exchange Energy at the Delivery Point, and to deliver the Return Exchange Energy to the Delivery Point. Each Party shall designate authorized representatives to effect the Scheduling of Exchange Energy. All deliveries and receipts of Exchange Energy under this Agreement shall be made at the Delivery Point or other mutually agreed-to delivery point.

3.3.2 Exercise of Option to Schedule Exchange Energy. Under the terms of this Agreement, PGE may exercise its option to schedule Exchange Energy by notifying Counterparty on the customary scheduling day by 6:30 PPT of its intent to schedule Exchange Energy.

3.3.3 Preschedules. The Parties shall exchange preschedules for all deliveries of energy hereunder, including identification of receiving and generating control areas, by 10:00:00 PPT on the last Business Day prior to the Scheduled date of delivery. The Parties' respective representatives shall maintain hourly real-time Schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. All schedules hereunder shall be accounted for on the basis of scheduled hourly quantities of Exchange Energy at the Delivery Point, except that when deliveries are interrupted for any reason, schedules shall be reduced thereafter to reflect such interruptions. In case the scheduled deliveries and receipt of Exchange Energy are not maintained for an entire hour, deliveries shall be pro-rated on a mutually agreed-upon basis. Counterparty and PGE shall maintain records of hourly Exchange Energy schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' Schedule. All Exchange Energy shall be pre-scheduled according to customary WECC scheduling practices.

ARTICLE 4 FORCE MAJEURE

4.1 Definition.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations to deliver or receive Product under this Agreement, which event or circumstance was not anticipated as of the date the purchase or sale was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of the Claiming Party’s markets; (ii) The Claiming Party’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Claiming Party’s supply; or (iv) The Claiming Party’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point or the Return Delivery Point, as the case may be, and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

4.2 Occurrence and Notice.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect thereto. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

4.3 Obligations.

No Party shall be relieved by operation of this Article 4 of any liability to pay or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

ARTICLE 5 EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

5.1.1 the occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party establishes and maintains for so long as the

Material Adverse Change is continuing, Performance Assurance to the Non-Defaulting Party in an amount determined by the Non-Defaulting Party in a commercially reasonable manner;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

5.1.3 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

5.1.4 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article 6);

5.1.5 such Party becomes Bankrupt;

5.1.6 the failure of such Party to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement;

5.1.7 the occurrence of a Merger Event with respect to such Party or its Guarantor;

5.1.8 the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in Section 1.1.18) which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party or any other entity specified for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount;

5.1.9 the occurrence of a Letter of Credit Default;

5.1.10 with respect to such Party's Guarantor, if any:

5.1.10.1 any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

5.1.10.2 the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement;

5.1.10.3 the Guarantor becomes Bankrupt;

5.1.10.4 the failure of the Guarantor's Guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of the guaranteed Party under this Agreement to which such Guaranty shall relate without the written consent of the other Party; or

5.1.10.5 the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

5.1.10.6 the occurrence of a Guaranty Default.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Contract Term and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date and the Termination Payment (hereinafter defined) payable hereunder shall be calculated in accordance with Section 5.2.2 below).

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. However, it is expressly agreed that (i) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment (as hereafter defined) and (ii) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges. At the time for payment of any amount due under this Section 5.2, one Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (i) all Settlement Amounts that are due to the Defaulting Party, plus any cash or other form of security then available to the Non-Defaulting Party under this Agreement, plus any or all other amounts due to the Defaulting Party under this Agreement against (ii) all Settlement Amounts that are due to the Non-Defaulting Party, plus any cash or other form of security then available to the Defaulting Party under this Agreement, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is due from the Defaulting Party, the Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed, or (ii) 180 days after the Early Termination Date.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the purchases or sales are not

yet liquidated in accordance with Section 5.3, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance.

Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Scheduled Product unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.4 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 6
REMEDIES FOR FAILURE TO DELIVER/RECEIVE

6.1 Remedy for Counterparty's Failure to Deliver.

6.1.1 Liquidated Damages Due to PGE. If Counterparty (a) fails to Schedule and/or deliver all or part of the Product pursuant to this Agreement, or (b) fails to receive Return Exchange Energy pursuant to this Agreement, and such failure is not excused under the terms of this Agreement or by PGE's failure to perform, then Counterparty shall pay PGE within five (5) Business Days of invoice receipt, an amount, for (i) such deficiency, equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price, or (ii) such Counterparty failure, equal to the positive difference, if any, obtained by subtracting the Sales Price (as calculated in Section 6.2.2, substituting Counterparty for PGE, and vice versa) from the Contract Price, respectively. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.1.2 Calculation of Replacement Price. The Replacement Price in regard to any Product Scheduled but not delivered to PGE by Counterparty shall be the price at which PGE either:

6.1.2.1 purchased for delivery at the Delivery Point a replacement for any such Product in a commercially reasonable manner, adding any:

6.1.2.2 costs reasonably incurred by PGE in replacing such Product; and

6.1.2.3 additional transmission charges, if any, reasonably incurred by PGE in delivering such Product to the Delivery Point; or

6.1.2.4 absent a purchase, then the market price at the Delivery Point for such Product not delivered as determined by PGE in a commercially reasonable manner.

6.1.2.5 In no event shall such price include any penalties, ratcheted demand or similar charges, nor shall PGE be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Counterparty's liability.

6.2 PGE's Failure.

6.2.1 Liquidated Damages Due to Counterparty. If PGE fails to (a) receive all or part of the Scheduled Product, or (b) to return the Exchange Energy pursuant to the terms of this Agreement, and such failure is not excused under the terms hereof or by Counterparty's failure to perform, then PGE shall pay Counterparty, on the date payment would otherwise be due in respect of the Month in which the failure occurred or within five (5) Business Days of invoice receipt, an amount for (i) such deficiency, equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price, or (ii) an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price (as calculated in Section 6.1.2, substituting Counterparty for PGE, and vice versa), respectively. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.2.2 Calculation of Sales Price. The Sales Price in regard to any Product Scheduled but not received by PGE shall be the price at which Counterparty:

6.2.2.1 resells for delivery any such Product in a commercially reasonable manner, deducting from such proceeds any:

(a) costs reasonably incurred by Counterparty in reselling such Product; and

(b) additional transmission charges, if any, reasonably incurred by Counterparty in delivering such Product to the third party purchasers; or

6.2.2.2 absent a sale, the market price at the Delivery Point for such Product not received as determined by Counterparty in a commercially reasonable manner.

6.2.2.3 In no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Counterparty be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize PGE's liability.

6.3 Duty to Mitigate.

Subject to Sections 6.1.2.5 and 6.2.2.3, each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

6.4 Acknowledgement of the Parties.

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as unreasonable or a penalty. If a Party fails to pay undisputed amounts in accordance with this Article 6 when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amounts plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article 6 shall be the sole and exclusive remedy of the Parties of the failure of Counterparty to sell and deliver, and PGE to purchase and receive or return, the Quantity of Product and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 shall be submitted to arbitration in accordance with the arbitration procedures set forth in Article 17.

6.5 Survival.

The provisions of this Article 6 shall survive the expiration or termination for any reason of this Agreement.

ARTICLE 7 PAYMENT AND NETTING

7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the calendar month shall be the standard period for all payments under this Agreement (other than for Counterparty or PGE Failure under Sections 6.1 and 6.2 respectively and for termination under Section 5.4). On or before the tenth (10th) day of each month, each Party shall render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such

interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned to, upon request, or deducted by the Party making such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party making such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the Month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date under this Agreement through netting, in which case all amounts owed by one Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, including any related damages calculated pursuant to Article 6 (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article 6), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article 6, interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 8 LIMITATIONS

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 9 CREDIT AND COLLATERAL REQUIREMENTS

The applicable credit and collateral requirements shall be as follows.

9.1 Financial Information.

If requested by a Party, the other Party shall deliver (i) within 120 days following the end of each fiscal year, a copy of such Party's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long

as the other Party diligently pursues the preparation, certification and delivery of the statements.

9.2 Collateral and Security.

The Parties agree that, in order to secure the obligations of Counterparty to PGE hereunder, subject to Section 9.3 below, Counterparty shall at PGE's request:

9.2.1 cause its Guarantor to execute and deliver to PGE a Guaranty agreement in a form and amount reasonably acceptable to PGE. Such Guaranty shall be delivered prior to the execution and delivery of this Agreement; or

9.2.2 establish and maintain an escrow account for the benefit of PGE in a form and amount reasonably acceptable to PGE. Evidence of such escrow account shall be delivered to PGE concurrently with the execution and delivery of this Agreement. The costs of such escrow account shall be borne by Counterparty; or

9.2.3 provide a cash deposit in an amount reasonably acceptable to PGE. Such cash deposit shall be delivered to PGE concurrently with the execution and delivery of this Agreement; or

9.2.4 provide a Letter of Credit in a form and amount reasonably acceptable to PGE. Such Letter of Credit shall be delivered concurrently with the execution and delivery of this Agreement.

9.3 Provision of Performance Assurance.

If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to PGE exceeds Counterparty's Collateral Threshold, then PGE, on any Business Day, may request that Counterparty provide Performance Assurance in an amount equal to the lesser of (i) the remaining period of the Contract Term or (ii) for a period of twenty-four (24) months commencing from the date PGE provides notice to Counterparty of such required Performance Assurance, (rounding upwards for any fractional amount to the next Rounding Amount), less any Performance Assurance already posted with PGE. Such Performance Assurance shall be delivered to PGE within two (2) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Counterparty, at its sole cost, may request that such Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment (rounding downwards for any fractional amount to the next Rounding Amount). In the event that Counterparty fails to provide Performance Assurance pursuant to the terms of this Article 9 within two (2) Business Days, then an Event of Default under Article 5 shall be deemed to have occurred and PGE will be entitled to the remedies set forth in Article 5 of this Agreement.

For purposes of this Section 9.3, the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by PGE as if this Agreement had been liquidated,

and in addition thereto, shall include all amounts owed but not yet paid by Counterparty to PGE.

9.4 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Counterparty delivers Performance Assurance hereunder, Counterparty (the "Pledgor") hereby grants to PGE (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PGE, and Counterparty agrees to take such action as PGE reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Counterparty, PGE may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of Counterparty in the possession of PGE or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of PGE free from any claim or right of any nature whatsoever of Counterparty, including any equity or right of purchase or redemption by Counterparty. PGE shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to PGE after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.5 Holding Performance Assurance.

PGE will be entitled to hold Performance Assurance in the form of cash provided that the following conditions are satisfied: (i) PGE is not a Defaulting Party and has a Credit Rating that is BBB- or higher by S&P or Baa3 or higher by Moody's and (ii) Performance Assurance may be held only in a jurisdiction within the United States.

9.6 Delivery of Performance Assurance.

Upon the occurrence and during the continuance of a Material Adverse Change or an Event of Default with respect to PGE, PGE shall deliver (or cause to be delivered) not later than two (2) Business Days after request by Counterparty, all Performance Assurance in its possession or held on its behalf by a financial institution, to a segregated, safekeeping or custody account ("Collateral Account") within a financial institution that is a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank, with such bank having shareholder's equity of at least \$10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P approved by Counterparty (which

approval shall not be unreasonably withheld). The title of the Collateral Account shall indicate that the property contained therein is being held as Performance Assurance for PGE. The financial institution shall serve as custodian with respect to the Performance Assurance in the Collateral Account and shall hold such Performance Assurance for the security interest of PGE and, subject to the security interest, for the ownership of the Counterparty.

9.7 Performance Assurance Event of Default.

Failure by PGE to comply with any of the obligations under Section 9.6 will constitute an Event of Default with respect to PGE if the failure continues for two (2) Business Days after notice of the failure is given to PGE.

9.8 Interest Rate on Cash Collateral.

Performance Assurance in the form of cash shall bear interest at the Interest Rate on Cash Collateral and shall be paid to the Pledgor on the third Business Day of each calendar month. "Interest Rate on Cash Collateral" means the lesser of (i) the maximum amount allowed by applicable law and (ii) the Federal Funds Rate for the holding period. The "Federal Funds Rate" means the effective Federal Funds Rate as published daily by the Federal Reserve Bank H.15 Statistical Release website for each day of the holding period. Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days.

**ARTICLE 10
GOVERNMENTAL CHARGES**

10.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Non-Sale Related Governmental Charges and Taxes.

The delivering Party shall pay or cause to be paid all charges or taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product arising prior to the Delivery Point. The receiving Party shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than those related to the sale of the Product and are, therefore, the responsibility of the delivering Party). In the event Counterparty is required by law or regulation to remit or pay Governmental Charges which are PGE's responsibility hereunder, PGE shall promptly reimburse Counterparty for such Governmental Charges. If PGE is required by law or regulation to remit or pay Governmental Charges which are Counterparty's responsibility hereunder, PGE may deduct the amount of any such Governmental Charges from the sums due to Counterparty under Article 7 of this Agreement. However, nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

10.3 Sale-related Governmental Charges and Taxes.

In addition to all other payments required under this Agreement, the delivering Party shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the energy sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) to the Delivery Point.

10.4 Indemnification.

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the energy sold, delivered and received hereunder that are the responsibility of such Party pursuant to this Article 10.

ARTICLE 11
MARKET DISRUPTION

11.1 Occurrence.

If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined pursuant to the Price Source specified in this Agreement for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the First Trading Day on which the Market Disruption event occurred or existed, then the Floating Price shall be determined in good faith by PGE, by taking the average of two or more dealer quotes from an equal number of dealers selected by each Party.

11.2 Remedy.

For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement with thirty (30) days of the date of delivery, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice pay such amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1) and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

ARTICLE 12

RATES AND TERMS BINDING; FERC STANDARD OF REVIEW

12.1 Mobile-Sierra Doctrine.

12.1.1 The Parties, for themselves and their respective successors and assigns, agree that the standard of review for proposed changes to any section of this Agreement, or to any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement, that specifies the rate(s) or other material economic terms and conditions agreed to by the Parties, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). The Parties, for themselves and their respective successors and assigns, hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.

12.1.2 To the extent FERC adopts in a final or subsequent policy statement (“FPS”) the use of specific language which varies from that set out in 12.1 above, then 12.1 above shall, without further action of either Party, be deemed amended to reflect such specific language, provided that to the extent that the specific language adopted in an FPS is in any way inconsistent with the mutual intent of the Parties in this regard as currently set forth in 12.1 above, then the Parties agree to meet to attempt to negotiate in good faith an amendment to this section to address such inconsistencies, provided further that neither Party shall be obligated in any way to agree to any such amendment.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES;

13.1 Representations and Warranties.

On the Effective Date and throughout the Contract Term, each Party represents and warrants to the other Party that:

13.1.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

13.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

13.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

13.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject only to any Equitable Defenses;

13.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

13.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

13.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

13.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

13.1.9 it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

13.1.10 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

13.1.11 with respect to this Agreement involving the purchase or sale of a Product, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such; and

13.1.12 the material economic terms of this Agreement were subject to individual negotiation by the Parties.

13.2 Indemnity.

To the fullest extent permitted by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any Indemnity Claims caused by, resulting from, relating to or arising

out of any act or incident involving or related to any Capacity or Exchange Energy and occurring at any time when such Capacity or Exchange Energy is under the Indemnitor's possession and control; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee.

ARTICLE 14 TITLE AND RISK OF LOSS

Title and risk of loss related to the Product shall transfer from one Party to the other Party at the Delivery Point or the Return Delivery Point, as the case may be. Each Party warrants that it will deliver to the other Party the Contract Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

ARTICLE 15 ASSIGNMENT; BINDING EFFECT

15.1 Assignment.

Neither Party shall assign this Agreement or its rights hereunder to any entity whose Credit Rating is not equal to or higher than that of such Party and is at least above BBB- by S&P and Baa3 by Moody's. No assignment may be made without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's Credit Rating is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets whose Credit Rating is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.2 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

ARTICLE 16 GOVERNING LAW

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAW. FOR ANY DISPUTE HELD NOT ARBITRABLE HEREUNDER EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION RELATING TO SUCH DISPUTE.

ARTICLE 17 ARBITRATION

Any claim, counterclaim, demand, cause of action, dispute, and controversy arising out of or relating to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of this Agreement, involving the Parties and/or their respective representatives (for purposes of this Article 17 only, collectively the "Claims"), even though some or all of such Claims allegedly are extra-contractual in nature, whether such Claims sound in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, for damages or any other relief, shall be resolved by binding arbitration. Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Parties' Claims, the arbitrators shall refer to the governing law. It is agreed that the arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or under the Federal Arbitration Act, or under the Commercial Arbitration Rules of the American Arbitration Association, the Parties hereby waiving their right, if any, to recover any such damages. The arbitration proceeding shall be conducted in Portland, Oregon. Within thirty (30) days of the notice of initiation of the arbitration procedure, each party shall select one arbitrator. The two (2) arbitrators shall select a third arbitrator. The third arbitrator shall be a person who has over eight years professional experience in electrical energy-related contractual arrangements and who has not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two party-appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two party-appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the Party that appointed such arbitrator. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties.

ARTICLE 18 RECORDS AND AUDIT

18.1 Records.

Each Party shall keep proper books of records and account, in which full and correct entries shall be made of all dealings or transactions of or in relation to this Agreement in accordance with generally accepted accounting principles consistently applied.

18.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

ARTICLE 19 GENERAL PROVISIONS

19.1 General.

This Agreement (including the exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all transactions under this Agreement constitute the entire agreement between the Parties relating to the subject matter.

Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect remaining performance under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart

any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.2 Entirety.

This Agreement and the Appendices and Exhibits hereto constitute the entire agreement between the Parties and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by verbal agreement between the Parties, no amendment, modification or change herein shall be enforceable unless reduced to writing and executed by both Parties.

19.3 Non-Waiver.

No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

19.4 Severability.

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

19.5 Survival.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

19.6 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

19.7 Relationships of Parties.

The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or

fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

19.8 Headings and Exhibits.

The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all Exhibits and Appendices referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

**ARTICLE 20
CONFIDENTIALITY**

Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

**ARTICLE 21
NOTICES AND COUNTERPARTS**

21.1 Notices.

21.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or facsimile), or other documentary form. Notice by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day); provided that Scheduling and Dispatch notifications sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, courier or facsimile. Notice by telephone shall be deemed to have been received at the time the call is received.

21.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 21.1.1.

21.2 Counterparts.

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Purchase and Sale Agreement for *[insert specific Capacity Exchange Product Name]* Capacity Exchange to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

**PORTLAND GENERAL ELECTRIC
COMPANY**

[Counterparty]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A:

NOTICES

Party: Portland General Electric Company [Counterparty]
(or "PGE"), an Oregon corporation

All Notices:

Street: 121 SW Salmon Street
City: Portland, OR 97204
Attn: General Manager, Power Contracts;
3WTCBR06
Phone: (503) 464-7343
Facsimile: (503) 464-2605
Duns: 00-790-9054
Federal Tax ID Number: 93-0256820

Invoices:

Attn: Risk Management
Phone: (503) 464-7375
Facsimile: (503) 464-7126

Scheduling:

Attn: Manager Power Coordination
Phone: (503) 464-7374
Facsimile: (503) 464-2605

Payments:

Attn: Accounts Payable
Phone: (503) 464-7126
Facsimile: (503) 464-2605

Wire Transfer:

BNK: United States National Bank of
Oregon-Portland
ABA: 123000220
ACCT: #153600063512
NAME: Portland General Electric
Company

Credit and Collections:

Attn: Credit Manager
Phone: (503) 464-8770
Facsimile: (503) 464-2605

All Notices:

Street:
City:
Attn:
Phone:
Facsimile:
Duns:
Federal Tax ID Number:

Invoices:

Attn:
Phone:
Facsimile:

Scheduling:

Attn:
Phone:
Facsimile:

Payments:

Attn:
Phone:
Facsimile:

Wire Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn:
Phone:
Facsimile:

With additional Notices of an Event of
Default to:

Attn: General Counsel
Phone: (503) 464-8850
Facsimile: (503) 464-2200

With additional Notices of an Event of
Default to:

Attn:
Phone:
Facsimile:

APPENDIX B:

CAPACITY EXCHANGE PRODUCTS

A. DAILY Capacity Exchange Product*

Product. Daily Capacity Exchange Product (daily shaping) is Capacity and associated Firm Energy ("Exchange Energy") delivered and returned on a daily basis. Daily Capacity Exchange Product provides PGE the right to deliver an amount of Exchange Energy for storage with the Bidder at rates up to the maximum contract MW per hour. PGE also has the right to receive a like quantity of Exchange Energy from the Bidder at rates up to the maximum MW per hour within 24 hours of delivery by PGE. The delivery and return quantity and hourly shape of Exchange Energy are to be specified by PGE on a day-ahead (pre-schedule) basis. In all cases, the total Exchange Energy delivered by PGE and returned by the Bidder shall match in quantity and quality for each 24-hour period.

Available Hours and Exercise Period. PGE may receive Daily Capacity Exchange Product during On-Peak and return during Off-Peak Hours. PGE may exercise its option to Schedule delivery or return of Exchange Energy for any On-Peak or Off-Peak hours for each calendar Day.

Term. Bidder may provide one or both of the following options in the same bid: 1) PGE's preferred Months: December, January and February of each year, commencing December 1, 2005 for two to twenty years, as well as 2) the following months which PGE will consider: July, August and September of each year, commencing July 1, 2006 for at least two years.

Contract Quantity. Bidder to provide. Bidder shall provide Exchange Energy in a minimum of 25 MW per hour and a Maximum of 400 MW per hour, when the option is exercised by PGE. *(However, PGE prefers to Schedule Exchange Energy in a minimum of 50 MW per hour up to 100 MW per hour when exercised.)* Delivery by PGE may precede receipt by PGE. *Sample: Bidder may provide a 100 MW per hour maximum receipt by PGE and 100 MWh maximum delivery by PGE.* In any case, the balance of Exchange Energy between the Bidder and PGE shall net to zero by the end of each Day.

Quality. Daily Capacity Exchange Product shall have the quality of a firm transaction, e.g., one in which either party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by *force majeure*, as defined in this Agreement. Firm Capacity will also be deemed to require the necessary reserves and ancillary services to ensure that Exchange Energy schedules are certain and delivered within the hour.

Delivery Point. Bidder to provide. (PGE's preferred Delivery Point is PGE's service territory.)

Energy Charge. Bidder to provide, e.g., USD ____per MWh.

Exercise Procedure For each day during the term that PGE chooses to exercise Daily Capacity Exchange Product, PGE will notify Bidder by 6:30 AM PPT of the customary scheduling day of its intention to receive firm, On-Peak Exchange Energy and deliver firm, Off-Peak Exchange Energy at the delivery point in a profile consistent with the Contract Quantity. All energy shall be pre-scheduled according to customary WECC scheduling practices.

Demand Charge. Bidder to provide. Sample: USD ____ per kW-month.

**Bidder may propose different terms and conditions for the above Daily Capacity Exchange Product and PGE will evaluate them in light of its needs and preferences as stated in the RFP bid information package.*

B. SHORT TERM Capacity Exchange Product*

Product. Short Term Capacity Exchange Product (intra-week capacity and Exchange Energy return) provides PGE the right to receive from Bidder and return to the Bidder a quantity of Exchange Energy within minimum and maximum per hour receipt and return restrictions. The total quantity of Exchange Energy received by PGE from the Bidder for each Day shall be returned to the Bidder within 168 hours of receipt by PGE. The receipt and return quantity and hourly shape are to be specified by PGE on a day-ahead (preschedule) basis. In all cases, the total Exchange Energy delivered and received by PGE and the Bidder in any 168 hour period shall match in quantity, quality, delivery and receipt point.

Available Hours. Short Term Capacity Exchange Product may be delivered and returned by PGE during On-Peak and Off-Peak hours.

Exercise Periods. Short Term Capacity Exchange Product can be exercised by PGE daily for any On-Peak or Off-Peak hours for each calendar day. However, the Product must be exercised in blocks of at least four (4) continuous hours.

Term. Bidder to provide. Sample: December 1, 2005 for at least two years.

Contract Quantity. PGE may Schedule the delivery or return of Off-Peak or On-Peak Exchange Energy in a minimum of 25 MW per hour up to 400 MW per hour when PGE exercises its option to Schedule.

Available Receipt and Return Capacity. Bidder shall provide. PGE preferred: Exchange Energy in blocks of 50 to 100 MW per hour, when exercised. Sample: Exchange Energy of 50 MW per hour, in increments of 25 MW per hour with a maximum of 1,200 MWh per exercise period (daily).

Quality: Short Term Capacity Exchange shall have the quality of a firm transaction, e.g., one in which either party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by *force majeure*, as defined in this Agreement. Firm Capacity will also be deemed to require the necessary reserves and ancillary services to ensure that Exchange Energy schedules are certain and delivered within the hour.

Delivery and Receipt Point: Bidder to provide. PGE preference: PGE's service territory.

Exchange Energy Charge: Short Term Capacity Exchange Product has no charge for Exchange Energy because the price, quantity and delivery point for Exchange Energy exchanges for each 168 hour period shall match and net to zero. If during any 168 hour period, an imbalance in Exchange Energy exchanged occurs, such imbalance shall be resolved through the scheduled delivery of Exchange Energy from the excess party to the

deficit party in a subsequent hour as soon as practical, bringing the net Exchange Energy exchanged to zero MWh.

Capacity (Demand) Charge: Bidder to provide. Sample: USD ____ per kW-month.

Exercise Procedure: For each day during the term that PGE chooses to exercise the Product, PGE will notify Bidder by 6:30 AM PPT of the customary scheduling day of its intention to receive firm, On-Peak and Off-Peak Exchange Energy at the delivery and receipt point for the selected exercise periods. If so elected, PGE shall subsequently schedule and return a like quantity and quality of Exchange Energy to Bidder within 168 hours at the delivery and receipt point. All Exchange Energy shall be prescheduled according to customary WECC scheduling practices.

**Bidder may propose different terms and conditions for the above Short Term Capacity Exchange Product and PGE will evaluate them in light of its needs and preferences as stated in the RFP bid information package.*

C. SEASONAL Capacity Exchange Product*

Product. Seasonal Capacity Exchange Product is variable quantity Seasonal Energy Exchange (Summer for Winter Energy Exchange), providing each Party the right to schedule and receive Exchange Energy within minimum and maximum constraints during the Party's respective receipt season.

Receipt Parties. PGE is the Winter Receipt Party and Bidder is the Summer Receipt Party.

Receipt Season: PGE's receipt season shall be winter ("Winter Receipt"), defined as the months of December, January, and February. Bidder's receipt season shall be summer ("Summer Receipt"), defined as the months of July, August, and September.

Available Hours and Exercise Periods. Seasonal Capacity Exchange Product can be exercised in On-peak and Off-Peak hours. Seasonal Capacity Exchange Product can be exercised Daily, for any on-peak or off-peak hours for each calendar day.

Term. Beginning December 1, 2005, for two to 20 years.

Contract Quantity. 25 MW per hour minimum, 400 MW per hour maximum, when exercised.

Available Receipt & Return Capacity. Bidder to provide.

PGE Preferred: Blocks of 50 to 100 MW per hour when exercised. Lower limits on MWh per season.

Sample: Variable, 100 MW per hour in increments of 25 MW per hour up to 2,400 MWh per day, when exercised, up to 10,000 per month and 30,000 MWh per season.

Note: Prior to execution of contract, Parties will negotiate a maximum MWh per season of between 10,000 and 30,000 MWh.

Quality. Seasonal Capacity Exchange Product shall have the quality of a firm transaction, e.g., one in which either party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by *force majeure*, as defined in this Agreement. Firm Capacity will also be deemed to require the necessary reserves and ancillary services to ensure that Exchange Energy schedules are certain and delivered within the hour.

Delivery & Receipt Points. Bidder to provide. PGE's preferred Winter Delivery and Receipt Point shall be at PGE's service territory. PGE's preferred Summer Delivery and Receipt Point shall be at COB or NW Market/Mid-Columbia Hub.

Exchange Energy Charge & Settlement Process. There is no Exchange Energy Charge for Seasonal Capacity Exchange Product because price and quantity for Exchange Energy exchanged by Bidder and PGE for each 12-month period, consisting of the annual combination of Summer and Winter receipt seasons, shall match and net to zero. If during any receipt season either Party elects to schedule and receive less than the maximum quantity of Exchange Energy for the season, and if such election results in a deficit or excess of total Exchange Energy exchanged between the Parties for the 12-month period, neither Party will be obligated to deliver or receive additional Exchange Energy, or other form of compensation, at any point in the future to balance the total quantity of Exchange Energy exchanged for such 12-month period.

Capacity (Demand) Charges. The value of the receipt seasons, quantities and Delivery Points should be calibrated to achieve economic parity between the parties, and as a result no demand charges will be paid by either party. When such economic parity cannot be achieved, the appropriate demand charge will be negotiated between the Parties.

Exercise Procedure. For each day during the Winter period, PGE shall notify Bidder by 6:30 AM PPT of the customary scheduling day of its intention to exercise its right to receive Exchange Energy and its intended delivery schedule. On those days on which PGE elects to exercise its right to receive Exchange Energy, Bidder will be obligated to deliver firm transactions (see under **Quality** above), at the Winter receipt point for such following day (or days). For each day during the Summer period, Bidder shall notify PGE by 6:30 AM PPT of the customary scheduling day of its intention to exercise its right to receive Exchange Energy and its intended delivery schedule. On those days on which Bidder so exercises its right to receive Exchange Energy, PGE will be obligated to deliver firm transactions (see **Quality** above) at the summer receipt point for such following day (or days). All Exchange Energy shall be pre-scheduled according to customary WECC scheduling practices.

**Bidder may propose different terms and conditions for the above Seasonal Capacity Exchange Product and PGE will evaluate them in light of its needs and preferences as stated in the RFP bid information package.*